



**MONTENEGRO
MINISTRY OF FINANCE**

CORRUPTION RISK ASSESSMENT IN SPECIAL RISK AREAS¹

Podgorica, July 2011

¹ Strategy for the Fight against Corruption and Organised Crime for the period 2010-2014

Introduction

This document presents the implementation of the measure 4.2.2 of the Action Plan for monitoring the implementation of recommendations from the European Commission's Opinion², adopted by the Government of Montenegro on 17 February 2011. Namely, the Analytical Report of the European Commission, which was submitted along with the aforesaid Opinion, stated that the new improved strategic anticorruption framework lacked “satisfactory risk assessment”³.

The Strategy for the Fight against Corruption and Organised Crime for the period 2010-2014 and accompanying Action Plan (2010-2012) already identify the areas “of special risk”, those being: the privatisation process, public procurement, urban planning, local governance, education and health. In this respect, a legitimate question was raised about conducting risk assessment of those areas, even though it would represent a kind of retroactive process. Generally, corruption risk assessment in certain sectors precedes the drafting of strategy and action plan, which then need to be strategically determined by the degree of risk and define appropriate goals and measures⁴. Furthermore, the term *corruption risk assessment* entails identification of organisational factors (internal and external) that favour or may favour corrupt behaviour within certain public policies, as well as formulation of recommendations for elimination or reduction of adverse effects. However, since the aforementioned strategic documents are subject to changes and prepared for a certain mid-term period, the risk assessment contained in this document will serve that purpose as well⁵.

In order to efficiently implement the above said measure, the Directorate for Anticorruption Initiative (DACI), as a holder of the project, in cooperation with the United Nations Development Programme (UNDP) and the Delegation of the European Union in Montenegro, developed a project to support the development of “*Corruption Risk Assessment of Special Risk Areas*”, to include the above said areas identified in the strategic documents. Under the project, in line with the UNDP procedures, four consultants were selected and tasked to draft the risk assessment from 12 May to 20 June 2011, by following these basic principles:

- **Use value.** The Risk Assessment should truly contribute to improving Montenegro's anticorruption efforts, in particular its strategic policies, and reinforce and add value to other relevant processes; furthermore; the document builds on previous efforts and does not represent a duplication of other analysis.
- **Feasibility.** The proposed approach should be feasible within the defined timeframe (one month) and available resources, taking into consideration numerous constraints but also the opportunities concerning other parallel processes (for example, the revision of Action Plan for the period 2010 – 2012 is underway). It points to the need for reaching a satisfactory trade-off between a realistic, feasible approach and ideal-case scenario that may not be achievable at this point.
- **Consensus.** Ensure that key stakeholders (primarily the Government, DACI, EU Delegation and civil sector), hold the same positions with regard to the Risk Assessment – meaning, they have a common understanding of the approach to be followed ensuring that the final output meets their expectations to the highest possible extent.

In this regard, the methodological approach for the preparation of this document was developed. It builds upon the fact that Montenegro doesn't have a shortage of corruption surveys, integrity

² European Commission, 9 November 2010, COM(2010) 670.

³ European Commission, 9 November 2010, {SEC(2010) 1334}, p. 20

⁴ See strategic cycle scheme, p. 5 and 6

⁵ The revision of the Action Plan (2010-2012) is in the final phase

assessments and similar analyses, but also acknowledges that they are not sufficiently linked to specific strategic commitments expressed in the Strategy and Action Plan for the Fight against Corruption and Organised Crime, or in the special sector action plans. Thus, the objective of this risk assessment is for its methodology, findings and recommendations to become the basis for further formulation and improvement of strategic documents. Furthermore, should this course of action turn out to be successful, it would be possible to apply it to other areas that are no less critical or sensitive when it comes to fight against corruption, such as the judiciary, law enforcement bodies (police), public administration, tourism etc. For these reasons, following the adoption of the Risk assessment, the Government, based on the same methodology, should also continue with conducting the risk assessment in other above-mentioned areas, in order to better prepare for the next strategic cycle.

Accordingly, a methodological approach to the risk assessment consists of the following phases:

- (1) Stock-taking of existing relevant integrity / corruption assessments, in particular with regard to the special risk areas (through the analysis of the available reports and structured consultations with relevant stakeholders), and
- (2) Integration of the data into a single risk assessment document in the said areas and formulation of the recommendations for improvement of the strategic anticorruption framework.

In this context, special attention was given to the consultations with all relevant stakeholders, particularly the institutions tasked with the implementation of commitments under the Action Plan, as well as the NGO sector. In this respect, the level of participation of these stakeholders in the consultations that preceded the drafting of this document is commendable. Also, during the entire period of the preparation of this document, a high degree of coordination between the DACI, UNDP, and the EU Delegation was ensured. The EU Delegation submitted a short opinion and suggestions to the document prepared by the EC Directorate-General for Internal Affairs (on 7 July 2011 via Email – see: Annex 1). Activities and the document are evaluated positively, and it was recommended that the risk assessment activity was repeated on a regular basis in other areas considered critical for the fight against corruption. All comments and suggestions by the Delegation were incorporated in this document.

Given that the timeframe was not optimal for a thorough risk assessment, it is important to note that this document is only the beginning of a process that will evolve in time and as the new strategic documents are developed. The goal was to develop an objective methodological basis and criteria for risk assessment in the given timeframe.

I. COMMON RISKS FOR SPECIFIC AREAS

Having in mind that several key pieces of anticorruption legislation are currently being amended (the Law on Public Administration, Law on Civil Servants and State Employees, Law on Prevention of Conflict of Interest and Public Procurement Law), following recommendations refer to the risks common for six areas that are subject to this analysis, and are related to the said laws:

Conflict of Interest

- Set forth clear and unambiguous definition and status of public officials, in order to ensure that all persons appointed by the Government or Parliament will be governed by the provisions of the Law on Prevention of Conflict of Interest (e.g., the Council for Privatisation and Capital Projects, Council for Higher Education, State Audit Institution, and others).
- Limit the duration of mandate of public officials in organs in charge of the enforcement of regulations and policies in the said areas.

- Expand the spectrum of the existing sanctions in order to include removal from office as well as ban to exercise a public function in the next term.
- Provide for incompatibility of simultaneous holding of executive powers at local level (President of Municipality) and legislative powers at state level (Members of Parliament).

Public Administration and Integrity

- Regulate in unique manner, i.e. standardize the appointment of managerial staff at state and local level, whose status is not currently regulated by the Law on Civil Servants and Employees (regulatory agencies, councils and others), so as to ensure transparency in the procedure and define the minimum professional requirements for employment, the amount of income, and others.
- The same obligation to adopt integrity plans and report on their implementation should be prescribed for all public administration authorities (state administration and local self-government), public services and institutions, including the entities exercising public legal powers.
- Until the adoption of the regulations that will govern the obligation for public administration to adopt integrity plans, the key institutions for subject areas should adopt their own integrity plans (as done by the Directorate for Anticorruption Initiative, Customs Administration and Tax Administration).
- Establish internal channels for reporting irregularities and suspicion of the existence of corruption in all institutions.

Public Procurement

- Prescribe the *ex post facto* control of execution of public procurement contracts, especially in health and local governments, and strengthen internal control in accordance with precise technical specifications and requirements.
- Prescribe an obligation for provision of the statement of integrity for all participants in the public procurement cycle procedure, to apply to both client, (public bodies) and private sector entities, as well as a mechanism to check those statements.
- Prescribe sanctions for discriminatory treatment and favouritism in public procurement.

Last but not least important, each of the six key areas highlights the need for structured reporting by the Tripartite commission (police, prosecutor's office, courts) in order to provide for a clear evidence of corruption flows. Currently, there are no such reports, since previous statistics of Tripartite commission combine all acts with the elements of corruption, without structuring them per areas, and thus it is not possible to conclude whether the special risk areas are covered by that specific statistics.

Therefore, it will be necessary to revise the method of reporting of the Tripartite Commission, in order to come up with a series of specific numbers, i.e. the data on corruption in each area, with a view to better understanding of: a) the number of detected cases of corruption, b) the number of complaints received, c) the amount of money involved, d) the number of judgments, and others. This report will be structured to point out directly to the situation in certain areas and issues related to the fight against corruption in each of them.

II. RISK ASSESSMENT METHODOLOGY

Methodology is a necessary first step that sets a unique organisational and methodological framework for corruption risk assessment of six subject areas, and consists of: goals, principles, phases, methods,

techniques and results of the assessment. As already mentioned, the term *corruption risk assessment* includes: 1) the process of identification of a number of a series of factors that favour or may favour corrupt behaviour in public institutions, and 2) the formulation of specific recommendations to eliminate such behaviour or mitigate it as much as possible. In other words, it is important to emphasise that this risk assessment is not to determine whether there is corruption or not in certain area, but rather to indicate in which way certain individual elements (external) may create risk “zones” for occurrence of corruption, and which of those dependent (internal) factors, such as individual behaviour, institutional culture etc., may contribute to spreading corruption incidence.

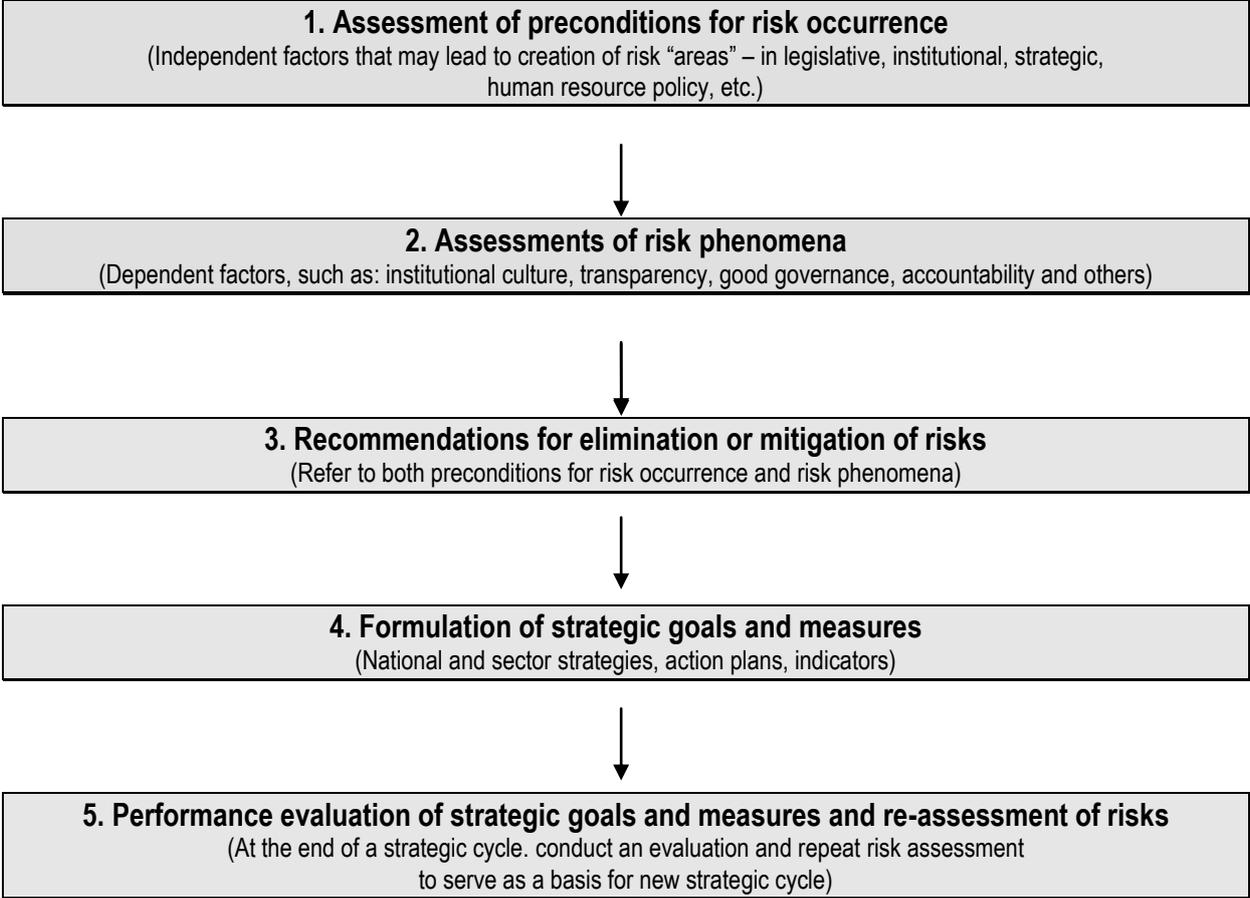
Therefore, in order to provide for a quality corruption risk assessment of the subject areas, this study applies, among other, the methods by employment of which the assessment did not directly tackle the corruption acts, but rather focuses on specific practices within certain institution that might compromise the capacity of that very institution to perform its function in an unbiased and responsible manner.

The methodology developed for these needs can be used in line ministries and other institutions as a tool for self-assessment of the corruption risks, while it also corresponds to one of the goals of this document, that is, - providing for a quality evaluation framework for current and future anticorruption strategic framework.

Accordingly, the methodology for corruption risk assessment consists of two parts:

- 1) Assessment of preconditions for risk occurrence (independent factors), and
- 2) Assessments of risk phenomena themselves (dependent factors).

The following scheme represents the cycle of risk assessment and preparation of strategic documents.



Thus, the risk assessment includes the first three elements out of five elements of strategic cycle.

1) Assessment of preconditions for risk occurrence

This part analyses the following parameters that may affect corruption risk occurrence in the given areas:

- Legal framework,
- Institutional framework,
- Strategic framework,
- Implementation of legal and institutional framework,
- Human Resource policy, and
- Relation towards the results of the existing researches and interviews.

Each parameter is composed of two parts: situation analysis and recommendations. The analytical part is a critical analysis of the current situation and identifies potential “grey areas” that may be a fertile ground for corruption occurrence (e.g., vague and inconsistent legal provisions, lack of appropriate sanctions, insufficient expert capacities in institutions, and similar), while the recommendations formulate the needs for improvement of the analysed parameters.

Following the assessment of preconditions for the risk occurrence (first phase), the second part of the methodological approach of the risk assessment consists of reports for given areas on particular risk phenomena identified through the desk review of documents and interviews conducted in certain institutions (second phase).

2) Risk Assessment

In order to facilitate approach in the assessment of risk phenomena, a common framework for all areas has been defined and used as a basis for interviews in institutions. This framework represents a mere initial step, followed by discussions adapted to the characteristics of institutions and the area under analysis. The following table presents the method on the basis of which the results were obtained in the second phase of the assessment:

Method for preparation of interviews for determining resistance of institutions to corruption risks

No.	Aspect	Potential issue	Potential risk
1.	Existence of anticorruption provisions	No provisions, unclear or incomplete provisions	Lack of uniform application procedure; High level of tolerance for abuse; Discretionary decision-making; Establishment of <i>ad-hoc</i> application structures; Pressure of hierarchy on decisions on sanctions against individuals;
2.	Content of anticorruption provisions	Provisions lack preventive character.	A few or no provisions to prevent solo action of management personnel (directors, heads of bodies) in institution; Insufficient control elements in the supervision procedure;
3.	Familiarity with anticorruption provisions	Insufficient familiarity with provisions	Lack of uniform application of provisions; High level of discretionary decision-

			making;
4.	Application	Inadequate application of provisions	Arbitrariness in application
5.	Existence of specific provisions on management of confidential information	Lack of provisions, unfamiliarity with or inapplicability of provisions	High level of tolerance for information leakage; No mechanism for early detection of information leakage; Poor personal vigilance;
6.	Existence of specific provisions on management of budget funds	Lack of provisions, unfamiliarity with or inapplicability of provisions	High level of tolerance for misconduct; No mechanism for early detection of budget misuse; Pressure of hierarchy to detect misconduct.
7.	Existence of specific regulations on private use of public goods and services	See under #6.	See under #6.
8.	Staff recruitment	Insufficient attention of the employees towards their obligation to report anticorruption action.	Insufficient insight into the integrity of potential staff; Insufficient attention to vulnerable aspects of new position; Arbitrariness in decision-making in the employment process;
9.	Job descriptions	Lack of job descriptions or poor update of job descriptions or incomplete or inaccurate job descriptions;	Insufficient clarity about powers and duties; Discretionary action of superiors;
10.	Concurrent internal and external publication of vacancies	Many vulnerable (risk-bearing) activities within one working post	Inadequate distribution of duties; Lack of readiness to separate duties;
11.	Existence of "grey areas"	Informal powers larger in scope than formal ones	Lack of clarity about legality of activities and decisions
12.	Consultations and accountability	Lack of prior consultations and <i>post facto</i> evaluation;	Lack of legality control; Overseeing and not correcting mistakes; Only correction of occasional mistakes possible;
13.	Existence of supervision	Heads / superiors unavailable for brief consultations	Solo actions; Discretionary decision-making;
14.	Attention to integrity	Lack of or rare consultations concerning integrity (less than once a month)	Discretionary decision-making; Insufficient staff supervision; Lack of information and no mechanisms to sanction non-observance of legal obligations deriving from the integrity provisions;
15.	Job appraisal interviews	Less than one interview a year and/or lack of attention to vulnerable aspects of a position	Inadequate control, guidance, supervision and correction; Lack of awareness about the importance of performance evaluation for professional advancement;
16.	External contacts	Head/superior unfamiliar with external contacts of employees	Inadequate control; Reduced possibility to identify external risk-bearing contacts (out the hierarchy); Solo action of employees;
17.	<i>Mala fide</i> conduct of employees	Lack of/ unfamiliarity with and/ or poor application of instructions on dealing with employees due to <i>mala fide</i> conduct	Inconsistent approach (arbitrariness in actions); Lack of awareness of consequences of corrupt behaviour;

18.	Gifts, additional sources of income	Unclear regulations	Excessive pressure due to which the notion of integrity is not narrowed down to the legal definition, but to the one imposed from the "top" and due to which no actions are undertaken;
19.	Legality vs. efficiency	Focusing too much on efficiency at the expense of legality of actions and decisions	Pressure to bypass lengthy and complicated procedures that would reject investors;
20.	Communication	Inefficient internal communication	Gap between management and employees;

The conclusions derived from the research (the existing surveys, analyses and reports in certain areas and interviews conducted in institutions), according to the presented methodology, have, in certain situations, proved to be different from the views of competent institutions; however, they have been formulated in such manner to recognise those different opinions voiced by the institutions. Where the disagreement in opinions was obvious, it has been explicitly stated in the document.

Prior to the detailed presentation of findings of the assessment of preconditions for the risk occurrence and risks themselves, below is the summary of all recommendations for the six special risk areas.

III. SUMMARY OF RECOMMENDATIONS FOR ELIMINATION OF CORRUPTION RISKS IN SUBJECT AREAS

Parameters Areas	Legal Framework	Institutional Framework	Strategic Framework	Implementation of Legal and Institutional Framework	Human Resource Policy	Relation towards the results of the existing researches in the Special Risk Areas	Risks/ Risk phenomena
Privatisation process	<p>1. Introduce adequate anticorruption provisions (conflict of interest, integrity, corruption reporting mechanism, codes of ethics) and the monitoring mechanism of their implementation in the Law on Economy Privatisation, as well as in the set of laws providing a wider legal framework governing the area of privatisation.</p> <p>2. Change the status of members of the Privatisation Council and Capital Projects so as to be equal with the status of other public officials with respect to the exercise of public functions and obligation to report income, provide integrity statements, etc.</p> <p>3. Align the Law on Concessions with the EU requirements and good European practice and set forth clear anticorruption provisions in the Law (similar to recommendation # 1).</p> <p>4. Provide for obligatory external control of work of the Council for Privatisation and</p>	<p>1. Investment and Development Fund to be given greater institutional significance, in accordance with the capacities and experience it has in the privatisation process up to date, and allow it to monitor the execution of the privatisation contracts for companies outside its portfolio.</p> <p>2. Specify the competences of the Council for privatisation and capital projects, and transfer part of those competences to other institutions engaged in privatisation activities, e.g. to the Investment and Development Fund; furthermore, specify an independent mechanism for supervision of operation of privatised monopoly companies.</p> <p>3. Provide technical and expert support to the Commission for Monitoring and Supervision of the Privatisation Process, so as to enable it to perform the activities under its competences in a quality manner; adopt clear regulations (e.g. Rules of Procedure) that would require the Commission to submit proper explanations</p>	<p>1. Introduce a monitoring mechanism for public discussions on privatisations of companies of special interest to the public (in the area of energy, transportation, tourism), which would enable the inclusion and acknowledgment of the opinions voiced during the public discussions, and imply also preparation of reports on the degree of adoption of proposals and arguments deriving from these discussions.</p> <p>2. Insert measure in the Action Plan, under Objective #42, which will refer to the provision of expert support for the Commission for Monitoring and Supervision of the Privatisation Process (e.g. through internships, internal job advertising, elimination of budget constraints, etc.)</p> <p>3. In the Action Plan, within its chapter relating to the privatisation process, insert measures that would include the Investment and Development Fund in strategic aspects of privatisation process, including monitoring of privatisation contracts concluded even outside its</p>	<p>Transparency of the privatisation process:</p> <p>1. Provide the public with the maximum access to information about the privatization process, including decisions and documents upon which privatization is carried out, through their regular publication on the website of the Council for Privatization and Capital Projects.</p> <p>2. Publish on the website of the Council for Privatization and Capital Projects the reports of the State Audit Institution (SAI), which refer to the use of funds obtained through privatisation that go into the state budget.</p> <p>3. Systematically consider proposals and suggestions arising from public discussions on the privatisation process, and ensure that a report on the discussion thereof must be published.</p> <p>Monitoring and supervision:</p> <p>4. Within the competences of the Administration for Prevention of Money-Laundering and Terrorism Financing, in particular require the verification of the origin of money invested in privatization.</p> <p>5. The report of the Council</p>	<p>1. Introduce clear criteria for the election of members of bodies and institutions competent for the privatization process, who are appointed or elected by the Government (members of the Council for Privatization and Capital Projects and Directors of Investment-Development Fund), provide for transparency of the process and limit the mandate to those persons.</p> <p>2. Provide for the transparency in the appointment of expert consultants in the Council and make it a subject to examination.</p> <p>3. Provide for the transparency in the appointment of expert consultants of the Commission for Monitoring and Supervision of the Privatisation Process.</p>	<p>1. Introduce the statements of integrity for members of the Council on Privatisation and Capital Investment and ensure full implementation of measures for prevention of conflict of interest (which consider the membership of a public official in the Council as the exercise of two or more public functions);</p> <p>2. Provide for the transparency in the process of investment control in privatized companies, through a transparent procedure of election of consortium and working groups which exercise control, and regular publishing of control findings and reports on conducted controls. .</p>	<p>1. Increase the control of the Council for Privatization and Capital Project, including the development and adoption of privatization plans, and privatization procedure of individual enterprises.</p> <p>2. Oblige the Council for Privatization and Capital Projects to take measures based on the findings of internal and external audit.</p> <p>3. Institutions for the monitoring and control of the privatization process, within its competence, must control all decisions related to privatization process whether they are made by the Council for Privatization and Capital Projects or other institutions.</p> <p>4. Prescribe the obligation for the Council for Privatization and Capital Projects to take into consideration the reports on violation of procedures or any other form of wrongdoing that are submitted to the Council or parliamentary Commission for Monitoring and Control of the Privatization Process, which would result in elimination of deficiencies and correction of irregularities.</p> <p>5. Develop a database on complaints on irregularities in the privatization process, which would include complaints submitted to the</p>

	Capital Investment.	along with conclusions; at the same time ensure the Government to systematically consider the conclusions of the Commission. 4. Establish an independent mechanism for the privatisation of the monopoly companies.	portfolio. 4. Issues related to concession should be addressed through amending the Action Plan, under Chapter on Private sector. 5. Provide for integrity plans to be equally effectively introduced in both public and private sector.	on Privatisation and Capital Project to include the part that would refer to the implementation of contracts and breach of contractual obligations by the new owners, as well as the SAI findings relating to the revision of the state budget in the part on the privatisation revenues and expenditures; 6. The system of monitoring, which would include the reports of non-governmental sector, should be established for the privatization in sectors, such as energy, tourism, maritime affairs, transport and telecommunications, agriculture, etc.;			<p>misdemeanour or criminal prosecution bodies or NGOs.</p> <p>6. Oblige the Tripartite Commission to incorporate the records of prosecuted cases in the area of privatization when drafting its reports.</p> <p>7. Publish, via media, the arguments for and against planned privatization of individual enterprises (from Privatization plans), specify desired objectives, cost and benefit analysis, planned privatization process as well as all relevant documents that may be available to the public.</p> <p>8. Establish in the Council for Privatization and Capital Projects a proactive practice of publishing privatization documents and information campaigns in the media.</p> <p>9. Ensure that all Decisions on privatization are based in line with the Feasibility study, taking into account on the effects of privatization on macroeconomic and regional development, including risk assessment if in some cases a corruption risk area is identified.</p>
Public procurement	1. Prescribe that the State Commission for the Control of Public Procurement Procedures is obliged to implement measures in the case of determined irregularities in public procurements exceeding EUR 500,000, as well as the	1. Design and introduce an appropriate model of the organizational structure of the Public Procurement Directorate, which would enable the transformation of the existing flat structure into a vertical one (or network), in accordance with the competences and capacities for the implementation of the new	1. The Strategy for the Fight Against Corruption and the Action Plan for its implementation should introduce a measure for further strengthening the role of the State Audit Institution in the public procurement system, including the decision-making process and review of the Public	1. Reinforce the supervision over the implementation of the new Law on Public Procurement, in terms of more consistent application of anticorruption provisions also when it comes to the inspection supervision. 2. The Report of the Tripartite Commission should present in a structured manner investigations initiated on the	1. Adopt a new Rulebook on internal organization and systematization of the Public Procurement Directorate; provide the Directorate with the staff support for help-desk department and e-procurements department; fill vacancies (or through internal transfers) with the staff of various professional/technical background (engineering,	1. Selection of experts to do the assessment in public procurements should be made more transparent 2. Monitoring of public procurement procedures by NGO sector should be set up on permanent grounds. 3. 1) Establish the system of integrity check in public procurement for members of the Public	1. Public Procurement Directorate should publish a profile of purchaser and bidder with identified risks; 2. Eliminate opportunities for discrimination and favouring of certain bidders, through efficient processing of complaints submitted to the Commission for Control of Public Procurement, on this ground.

	<p>contents of measures and the cases in which they are applied (complete or partial cancellation).</p> <p>2. Specify to which business organizations and legal persons the exemptions from the law are applied, what kind of confidential procurements it is about, and which segments of public procurements are exempted when it comes to defence and security.</p> <p>3. Prescribe mandatory publication of prior approval issued by the competent authority to the contracting party, as well as publication of all annexes to public contracts that require amending of contract provisions after its signing; define the cases when to use the open public procurement procedure.</p> <p>4. Limit the number and total amount of award procedures of related and additional services without prior publication of the public notice for competition that are not covered under the original public procurement contract, or to anticipate it in exceptional cases defined under the law.</p> <p>5. Prescribe that the tender documents, in its entirety, must not be changed after the</p>	<p>legal framework.</p> <p>2. The Commission for the Control of Public Procurement Procedures should institutionalize the following: (a) monitoring and control measures; and (b) legal affairs and policy formulation (measures).</p>	<p>Procurement Strategy and harmonization of the new Law on Public Procurements (Articles 117 and 118) with the European Directives.</p> <p>2. Include in the Report of the Tripartite Commission the structure of investigations conducted by the areas from the Action Plan, including public procurements.</p>	<p>basis of notifications and reports of the State Audit Institution.</p> <p>3. Strengthen the control of the public procurement system and processes related to the budget expenditures (effectiveness and efficiency of use of budget resources) conducted by SAI, control which is under the jurisdiction of the Public Procurement Directorate (by hiring an independent supervision team).</p>	<p>translation); strengthen personnel capacity for monitoring and control activities and policy and measures formulation activities.</p> <p>2. The Commission for the Control of Public Procurements should, in the shortest possible period, fill vacancies in accordance with the existing systematization, by engaging an independent consultant and software expert.</p> <p>3. During the election of a new composition of the Commission for the Control of Public Procurement Procedures, provide mobility of not only the experts in the field of public procurement stricto sensu, but also from other areas with professional requirements ensuring performance of this duty.</p>	<p>Procurement Directorate and Commission for the Control of Public Procurement Procedures during their recruitment and working relation through contracts or statements of integrity..</p>	<p>3. Within the Public Procurement Directorate to establish the practice of regular internal reports on all phases of preparation and implementation of public procurement.</p> <p>4. Clearly abide by the separation of competences and responsibilities in the implementation phase of of public procurement procedure.</p> <p>5. Ensure that all stakeholders in public procurement procedure are fully informed, in a provable manner, about any potential contact of a purchaser with bidder;</p> <p>6. Intensify the procedure of external and internal auditing, especially as of the moment of the conclusion of a public procurement contract.</p> <p>7. Oblige the Public Procurement Directorate to conduct external and internal audit during the implementation of public procurement contract.</p> <p>8. Publish public procurement contracts with selected bidders.</p> <p>9. When it comes to public procurement contracts (exceeding EUR 500 000), even the current states of the implementation thereof should be published.</p>
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	<p>expiration of the deadline for the submission of bids.</p> <p>6. Stipulate the minimum requirements for an alternative tender or some other more specific definition of what an alternative tender means and what is considered under the most economically advantageous tender.</p> <p>7. Introduce a policy of reporting all forms of corruption even after signing the contract, as well as measures to be taken to prevent the occurrence of corruption;</p> <p>8. Introduce a policy to handle conflict of interests arising after the signing of the contract.</p>						
Urban planning	<p>1. Clearly and significantly systematize anti-corruption provisions during the upcoming amendments to the Law on Spatial Planning and Construction, and provide for legal grounds to set up an institutional framework for their implementation.</p> <p>2. Simplify the procedure for issuing a construction permit, through better concentration of responsibilities.</p> <p>3. Legally bind the entities in charge of developing planning documentation to do an</p>	<p>1. Strengthen the technical capacity of the Internal Audit Department of the Ministry of Sustainable Development of Tourism for the implementation of anti-corruption measures.</p> <p>2. Define the cooperation and coordination between the Ministry and all the institutions ensure the data and other necessary elements for spatial planning.</p>	<p>1. Establish quality indicators for measuring the effectiveness of the implementation of the Action plan to combat corruption in urban planning, especially in terms of: the adherence to procedures, the efficiency of services, efficiency of individuals and others.)</p> <p>2. Introduce elements of integrity in the process of amending the Law on Spatial Planning and Construction..</p>	<p>1. Establish a control mechanism for the implementation of the Law on Spatial Planning and Construction (after the adoption of amendments), which would contribute to eliminating the business barriers and other procedural complications related to obtaining permits, and include the NGO sector in monitoring the implementation of the law.</p> <p>2. Strengthen the inspection supervision and control over the work of the relevant inspectorates, through enhancement of staff capacity and technical equipment, and examine the appropriateness of entrusting the state competences in the inspection control to the local</p>	<p>1. Improve the administrative capacity of local-self government secretariats for the fight against corruption in urban planning</p> <p>2. Introduce a reward system to inspectorates in charge of performing supervision in spatial planning and construction area (Environmental Inspectorate, Construction Inspectorate, Urbanism Inspectorate) and create conditions to fill vacant positions with quality employees and strengthen their capacities.</p> <p>3. Strengthen human resource and professional capacity of the Police Directorate and Prosecutor's Office to investigate, detect and prosecute criminal acts</p>	<p>1. Establish a common mechanism for monitoring of the adopted measures and improving the current strategic framework in the field of urban planning in cooperation with the NGO sector.</p>	<p>1. Improve efficiency and quality of work of institutions which provide inputs for plans, particularly of the Real Estate Directorate to a higher level.</p> <p>2. Introduce control and possible sanctions for non-enforcement of legal obligations to publish all licenses online, cases of license issuance contrary to the current planning documentation and cases of obstructing free access to information on plans and process of issuing building and operational use permits.</p> <p>3. Establish a system of continuous reporting on the implementation of anti-corruption provisions by the internal control of the Ministry</p>

	impact assessment of public discussions before making a decision on the adoption of the plan			self-governments, with clearly defined criteria for the entrustment of the said affairs and the abuse prevention mechanisms. 3. Conduct the full automation of procedures in subject areas of the Ministry of Sustainable Development and Tourism and establish and regularly update an online database with the information on the issued building and occupancy permits, planning documents and cadastral bases.	with elements of corruption in urban planning.		of Sustainable Development and Tourism, as well as in secretariats for urban planning and communal services in municipalities. 4. Implement information system in the Department of Urbanism in the Ministry of Sustainable Development and Tourism and technically reinforce inspection services in this respect. 5. Introduce elements of integrity for all positions in institutions responsible for planning, and publicly report on the implementation of integrity measures..
Health	<ol style="list-style-type: none"> 1. Limit additional work to a certain number of hours, and set up the system for monitoring the additional work. 2. Introduce into the proper legal framework a possibility to protect health workers who report corruption in the health care institutions, as well as internal channels and procedures to report corruption in health institutions. 3. Adopt a Rulebook on the relationship between doctors and pharmaceutical companies and their communication, as well as clinical guide and guidelines. 4. Adopt the Code of ethics for employees of the Health Insurance Fund.. 	<ol style="list-style-type: none"> 1. Ensure a greater financial autonomy of the Health Insurance Fund (i.e. ensure the HIF to manage its funds independently); 2. Strengthen the sector of Ministry of Health s for quality control when it comes to the fight against corruption ; 3. Introduce mechanisms for coordination between the Public Procurement Directorate, Commission for the Control of Public Procurement Procedures, Montefarm and the Health Insurance Fund (for example, formation of ad hoc teams for specific procurements and the like); 4. hEnsure greater autonomy of the Protector for Patient Rights from the health care facility that appoints him/her.. 	<ol style="list-style-type: none"> 1. Until integrity principles are established, introduce the adoption of the integrity plans for health care and its institutions in the sectoral Action plan, as a measure with accompanying indicators. 2. Determine measures for defining priorities in the purchase of medical equipment, the same way it is regulated for the purchase of medicines. 3. Develop indicators for assessing the quality of work, and report on the performance of appropriate measures in accordance with the indicators. 4. Establish a quality system of rewarding and motivating employees, as well as performance indicators. 	<ol style="list-style-type: none"> 1. Oblige Health Care Quality Commission and the Protector to report on the implementation of anti-corruption measures. 2. Introduce plans and programs of "zero tolerance" according to risk events. 3. Provide proper monitoring of the implementation of the legal provisions governing the relation between health workers and pharmaceutical companies. 4. Assign bodies or persons who would be in charge for interpreting and monitoring of the implementation of the Code. 5. Provide adequate and professional monitoring of the Law on Free Access to Information.. 	<ol style="list-style-type: none"> 1. Improve rewarding system as part of human resources management in health care, in accordance with objective criteria. 2. Establish selection of directors in a way which guarantees transparency and objectivity of selection in all phases, not only in the part related to legal requirements. 	<ol style="list-style-type: none"> 1. Include relevant and applicable anti-corruption measures arising from the research findings in sectoral and national action plan. 2. Include obligation of cyclic research and periodic reporting on whether these measures, proposed on the basis on previous research, have led to the improvements in comparison to the previous situation. 	<ol style="list-style-type: none"> 1. Make waiting lists transparent with daily updates (patients on waiting list should be coded). 2. Introduce the monitoring of decisions on establishing priorities on waiting lists. 3. Provide for outsourcing – engagement of medical experts in tenders in the Commission for the Control of Public Procurement when deciding on appeals related to medicine procurement and consumables (Montefarm's comment) 4. Establish a central register of additional work at the level of the network of health institutions. 5. Clearly define the relationship between health workers and pharmaceutical companies. 6. Ensure transparency and monitoring of the system of granting sick..

Education	<ol style="list-style-type: none"> 1. An aspect of integrity should be introduced in the existing legal framework during the foundation of schools, the election of a School Board and principals. 2. Enhance transparency in the implementation of the General Law on Education, particularly in its part related to the election of principals. 3. Ensure the protection of persons employed in the education system wishing to report suspicions of corruption. 4. Adopt secondary legislation regulating an internal procedure for reporting corruption by employees. 5. Amend secondary legislation related to the financing of sitting exams for part-time students. 6. Require the disclosure of all the university income, including donations and other income. 7. Introduce a legal obligation for the academic staff to report their property. 	<ol style="list-style-type: none"> 1. Make the work of the Council for Higher Education transparent as to the accreditation and re-accreditation of higher education institutions. 2. Consider the manner of appointing the members of the Council for Higher Education aimed at professionalization and higher degree of independence from the executive authorities. 3. Hire an independent auditing firm to control the budget of higher education institutions, in accordance with the amended provisions of the law. 4. Establish the Student Ombudsman with a precise role in the prevention of corruption. 5. The work of the Anti-Corruption Commission (Working Group for monitoring the implementation of the Action Plan for the Fight against Corruption in education) needs to be made more transparent, i.e. publish the reports on monitoring the implementation of measures from the sectoral action plan. 	<ol style="list-style-type: none"> 1. Ensure the implementation of measures that would introduce an element of integrity in the education system even before standardization of the integrity plans at the state level; 2. Along with defining clear key performance indicators arising from the sectoral Action Plan for the fight against corruption in education, ensure an efficient mechanism of permanent monitoring of the implementation of measures and their periodic evaluation.. 	<ol style="list-style-type: none"> 1. Establish a registry of teachers engaged in additional activities, in accordance with the law and secondary legislation. 2. Amend the Rulebook on exams for part-time students and introduce an obligation to avoid conflicts of interest. 3. Amend the Code of Academic Ethics in a way to provide for stricter sanctions for violations of the code, and introduce the elements of integrity into the Criteria for election in academic titles. 4. Adopt the Code of Ethics for Teachers. 5. Promote transparency of work of the Council for Higher Education. 6. Introduce a mechanism for monitoring and reporting on the implementation of the Law on Free Access to Information in the education institutions and harmonize the Guide on free access to information of the University of Montenegro with the law. 	<ol style="list-style-type: none"> 1. Ensure objectivity and transparency in the procedure of engaging teaching assistants and among other things, with reducing the role of the opinion of the subject teacher. 2. Introduce modes of prior verifications during the admission of candidates for teaching assistants in order to avoid nepotism and cronyism, and during the working engagement avoid possibility of direct supervision by a relative. 	<ol style="list-style-type: none"> 1. Strengthen the responsibility of the institution to introduce the system of verification of results of the researches and interviews (e.g. if a research identifies sitting exams as a corruption risk area, it would be necessary to get a feedback based on the verification of the said research results by relevant institutions.) 2. Introduce a system of monitoring the implementation of recommendations given in the researches, by the client. 	<ol style="list-style-type: none"> 1. Establish a centralized database of all candidates for admission in education institutions, which will contain the data that are essential for scoring and make the process of scoring and ranking of candidates transparent. 2. Establish clear and objective criteria when deciding in the Senate about expanding the number of students for admission to higher education institutions. 3. Prescribe clear requirements for leasing school premises and introduce a mechanism for monitoring of irregularities. 4. Introduce a register for additional work of teachers (with data about the teacher and students) and provide a quality mechanism for application and reporting on violations of rules on additional work. 5. Set quotas and control excessive admission of part-time pupils. 6. In case of equality of two or more candidates for directors of educational institutions, set clear criteria based on which the Minister shall decide which candidate to choose. 7. Adopt the Rulebook on clear and objective criteria for engagement of teaching associates and ensure transparency of the procedure of admission of teaching associates (for example, introduction of a database of applicants that will be available on the website of the institution). 8. In rulebooks, prescribe clear procedure for managing
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							and writing minutes of sitting for exam. 9. In rulebooks, prescribe that exam must always be attended by at least two teachers, and that written exams must be coded..
Local governance	<p>1. Make needs assessment for the adoption of a special Law on Election of Councillors, which would ensure direct accountability of councillors towards citizens, not towards their host political parties.</p> <p>2. Make changes to the Law on Local Self-Government and accordingly to the statutes of municipalities in order to secure greater participation of civil society organizations, which are not predominantly financed from the state budget or the local budget, in the Council for Development and Protection of Local Self-Government.</p> <p>3. Set forth the adoption of changes in the statutes of</p>	<p>1. Within the Chief Administrator's office establish the position for monitoring of the application of anti-corruption measures.</p> <p>2. Improve the system of communication (information flow) between the bodies of local self-government and local government. For this purpose, a quality information system should be implemented in all work processes.</p> <p>3. Adopt and ensure full implementation of the Law on Communal Activities, which prescribes in details the process of privatization of public services.</p>	<p>1. Revise local Action Plans for Fight against Corruption following the same procedure under which they were adopted with participation of NGOs and other stakeholders, and make them realistically feasible in a given period of time.</p> <p>2. Adopt measures to enhance integrity in all segments of local self-government, in particular when it comes to the election, nomination and appointment of personnel</p>	<p>1. Strengthen responsibility of managers of municipal secretariats and public services for the implementation of anti-corruption legal and strategic framework.</p> <p>2. Identify persons responsible for the implementation of action plans (e.g. associates of the Chief Administrator).</p> <p>3. Condition distribution of funds from equalization fund by the implementation of action plans for fight against corruption.</p> <p>4. Strengthen professional capacities of the Commission for Monitoring of Implementation of Local Action Plans established by the Ministry of Interior, as a competent authority for local self-government.</p> <p>5. Establish with the (organic) Law on Budget a link between the implementation of action plans in municipalities which do not use the Equalization Fund with capital investments</p>	<p>1. Set clear and transparent criteria for the employment in managerial positions in local self-governments (secretariat managers, service managers, etc.), which are not under the Law on Civil Servants and Employees;</p> <p>2. Encourage implementation of the National Training Strategy for Local Self-Government and introduction of a new system of human resource management;</p> <p>3. Train employees in local self-government bodies to combat corruption, particularly in terms of conflicts of interest.</p>	<p>1. Organizational culture in municipalities should contain elements of the fight against corruption in all segments, as a mechanism for monitoring of effectiveness of adopted measures based on conducted research.</p>	<p>1. As soon as possible adopt amendments to the Law on Spatial Planning and Construction, which would simplify procedures for issuing building permits and adopt a mechanism for monitoring of effects of this legal solution.</p> <p>2. Introduce specific and quantifiable measures to combat nepotism and conflicts of interest in local self-government, with clear objectives, activities and measures of success. One of these measures is incompatibility of executive positions at the local level with legislative function at the state level.</p> <p>3. Arrange records of permits, illegal construction and the status of cases under consideration;</p> <p>4. Increase efficiency and effectiveness of local government through the introduction of quality management and stricter internal control.</p>

	municipalities that would create the obligation to include representatives of opposition political parties into managerial bodies of public institutions/companies/services, whose founder is municipality, with the aim to improving effectiveness and transparency of work of these organizations.			(capital budget).			
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IV. DETAILED RISK ASSESSMENT: ASSESSMENT OF PRECONDITIONS FOR RISK OCCURRENCE IN SUBJECT AREAS

In accordance with the presented methodology, the next step is the assessment of preconditions for the risk occurrence in each of the six subject areas, in the order they are listed in the Action Plan for implementation of the Strategy for the Fight against Corruption and Organised Crime (2010 - 2012): the privatisation process, public procurement, urban planning, education, health, local governance.

1 PRIVATISATION PROCESS

Legal Framework

Situation Analysis

The legal framework regulating the area of privatisation consists of several regulations⁶, the most important of them being the Law on Economy Privatisation⁷. None of these regulations, however, contains explicit anticorruption provisions, and therefore neither the mechanisms to prevent corruption. These ambiguities in the legal framework create a very broad zone of potential corruption risk. In this regard, of particular significance are the Draft Law on Investment Funds and the Law on Concessions: the first one, for it is in the final phase of the adoption procedure in the Government, and there is a realistic possibility for it to be adopted without anticorruption provisions, and the second one, because, except for two provisions in Article 12, which are related to the conflict of interest, it does not contain anticorruption provisions and is not conformed with the EU requirements and European good practice, especially in the part containing the definitions, procedures and autonomy of the Commission on Concessions.

Former State Development Fund (one of three state funds to which in the previous phase of privatisation the social capital was translated into the state capital) was transformed by the Law on Investment and Development Fund into the Investment and Development Fund (IDF, joint stock company owned by the Government). This change of legal status partly relocated this institution from the framework of general anticorruption provisions relating to the public administration bodies (the Law on Prevention of Conflicts of Interest, Law on Civil Servants and Employees) to the framework of Law on the system of internal financial control in public sector, Law on Investment and Development Fund and the set of laws relating to joint stock companies (the Labour Law, Law on Business Organizations). However, none of the aforementioned laws contains anticorruption provisions, widening thus the space for corruption in this area, although the IDF has Code on Ethics for the Employees of the Fund.

The Group of States against Corruption of the Council of Europe (GRECO) in one of the reports on Montenegro from December 2010⁸, stated the distrust of civil society in the struggle against corruption in particularly sensitive areas. In this regard, when it comes to the legal framework in the areas of privatization, attention must be drawn to the Law on Prevention of Conflicts of Interest (Official Gazette of Montenegro, No. 1 / 09)⁹, which in Article 6, defines that the membership of a public official appointed or elected to the standing or ad-hoc working bodies and the joint commission established by a state authority is not considered as the performance of two or more public functions, thus members of the Council for Privatization and Capital Projects are exempted from the application of this Law, which constitutes a legal "gray area" for risk behaviours in this area.

⁶ Decree on privatisation funds and specialised private management companies (Official Gazette of the Republic of Montenegro 8/99, 18/00, 49/01 and 1/02); Law on Securities (Official Gazette of the Republic of Montenegro 59/00, 10/01, 43/05, 28 /06); Law on Investment Funds (Official Gazette of the Republic of Montenegro 49/04); Law on Investment and Development Fund (Official Gazette of the Republic of Montenegro 88/09 and 40/10); Draft Law on Investment Funds (in the procedure); Law on Concessions (Official Gazette of the Republic of Montenegro 08/09)

⁷ Official Gazette of the Republic of Montenegro 23/96, 6/99, 59/00, 42/04

⁸ Evaluation Report on Montenegro, (ETS 173 and 191, GPC 2), (Theme I), Strasbourg, Dec, 2010, item 75.

⁹ http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%297_Montenegro_One_ME.pdf

⁹ <http://www.konfliktinteresa.me/regulativa/Zakon-2009.htm>

During the privatisation process in Montenegro, a legal re-positioning took place in the area of concessions. The OECD/SIGMA Report on Montenegro¹⁰ noted constraints in the area of concessions, particularly when it comes to planning procedures, supervision and granting concession contracts by the line ministries; then the lack of a mechanism for determining integrity of members of Commission on Concessions (who are mostly appointed at the proposal of the line ministries). In its conclusion, the report stated that the new Law on Concessions from 2009 was not in line with the EU requirements and good European practice, and that it needed to be completely revised and coordinated with the planned revision of the Law on Public Procurement¹¹. On the other side, the Government developed and adopted in May 2011 *Proposal for Concession Policy in Montenegro*¹², which determines measures that, among others, require the amendments to the Law on Concessions.

Currently, there are no mechanisms of external control of the work of the Council on Privatisation and Capital Projects. Since the Council is a governmental body, i.e. composed mainly of the members of Government, the discretionary powers of the Government are thus further strengthened and provide room for undue influence on the work of the Council.

Recommendations – Legal Framework

- 1) Introduce adequate anticorruption provisions (conflict of interest, integrity, corruption reporting mechanism, codes of ethics) and the monitoring mechanism of their implementation in the Law on Economy Privatisation, as well as in the set of laws providing a wider legal framework governing the area of privatisation.
- 2) Change the status of members of the Privatisation Council and Capital Projects so as to be equal with the status of other public officials with respect to the exercise of public functions and obligation to report income, provide integrity statements, etc.
- 3) Align the Law on Concessions with the EU requirements and good European practice and set forth clear anticorruption provisions in the Law (similar to recommendation # 1).
- 4) Provide for obligatory external control of work of the Council for Privatisation and Capital Investment.

Institutional Framework

Situation Analysis

When it comes to the resistance to corruption of institutions in this area, the competences, organization and decision-making process of the Council for Privatization and Capital Projects, Investment and Development Fund and the Assembly Commission were separately analyzed. A striking disproportion among these institutions is apparent, and can be considered from the following aspects:

- The Council for privatisation and capital projects has a wide range of competences, i.e. significant concentration of privatisation-related activities, and consequently a large exposure to risk behaviour;

¹⁰ Montenegro Assessment 2010, item 5.3, <http://www.sigmaweb.org/dataoecd/28/42/46402010.pdf>.

¹¹ Ibid, p 102-109.

¹² <http://www.gsv.gov.me/vijesti/105708/Saopstenje-sa-sjednice-Vlade-Crne-Gore.html>

- Investment Development Fund is competent solely for monitoring the privatisation process of those enterprises that are owned by the Fund;
- Commission for Monitoring and Supervision of the Privatisation Process has narrowly defined competences, which, however, include a large number of privatisation processes and provide for a range of ways to perform the activities within its competences. Such a situation poses an objective risk to the Commission, arising from insufficient capacities (in terms of number and expertise of its members), which are necessary for performing tasks in a high quality manner.

Council on Privatisation and Capital Investment is currently conducting the privatisation of monopoly companies as well (energy, transport and others), which operations, among other laws, are subject to the anti-monopoly legislation¹³. Given that the privatization of monopoly companies is rather specific in terms of securing a monopoly position even after the implementation of the privatization process, and when we take into account the concentration of competences of the members of the Council in various stages of the privatisation process (management, control and ensuring implementation), it creates room for highly risk-bearing behaviour in specific situations of the privatisation process of the monopoly companies.

Recommendations – Institutional Framework

- 1) Investment and Development Fund to be given greater institutional significance, in accordance with the capacities and experience it has in the privatisation process up to date, and allow it to monitor the execution of the privatisation contracts for companies outside its portfolio.
- 2) Specify the competences of the Council for privatisation and capital projects, and transfer part of those competences to other institutions engaged in privatisation activities, e.g. to the Investment and Development Fund; furthermore, specify an independent mechanism for supervision of operation of privatised monopoly companies.
- 3) Provide technical and expert support to the Commission for Monitoring and Supervision of the Privatisation Process, so as to enable it to perform the activities under its competences in a quality manner; adopt clear regulations (e.g. Rules of Procedure) that would require the Commission to submit proper explanations along with conclusions; at the same time ensure the Government to systematically consider the conclusions of the Commission.
- 4) Establish an independent mechanism for the privatisation of the monopoly companies.

Strategic Framework

Situation Analysis

Privatisation strategies exist at the level of individual companies or industries; they are adopted by the Government of Montenegro, in cooperation with certain companies (Railroad Company, Telecom, Aluminium Plant Podgorica and others), with the obligation to hold public discussion. The Action Plan for the Fight against Corruption 2010-2012 foresees organisation of public discussions on plans and strategies for the privatisation of the companies of special interest to the public (in the sectors of energy, transport,

¹³ Law on Competition Protection, Official Gazette of the Republic of Montenegro 69/05, 37/07.

tourism), and thus the transparency of the privatisation process in this part is, to the great extent, determined by the quality of public discussions.

The Action Plan, under its objective #42, envisages the efficient operation of the Commission for Monitoring and Control of the Privatization Process, however, there are no measures related to providing expert support to the Commission.

Investment and Development Fund covers a part of the strategic aspects of privatisation of business organizations from the Fund's portfolio, presented in its *Mid-Term Work Programme*¹⁴, which are related to the privatization strategy, strategic investors and monitoring of contract implementation. The Fund is not covered by the Strategy for the Fight against Corruption and Organised Crime, which would be important in achieving the objectives of the Strategy in the area of privatisation.

In the part related to the legal anticorruption framework, the Strategy refers to the Law on Concessions, however, concessions and the Commission for Concessions are not covered by the Strategy and Action Plan, for example, under its Chapter "Private sector". In this way, the concessions have not been systematically included in the Strategy, which leaves the room for risk-bearing behaviour.

Even though the national Anticorruption Strategy and Action Plan, as well as the Strategy of Public Administration Reform in Montenegro (2011-2016) set forth the introduction of integrity plans, the risk in the area of privatisation, in strategic terms, exists, as the privatisation procedure is conducted and monitored in one part by public institutions and the other part by the Investment and Development Fund, a joint stock company and owned by the Government, which is not covered by the Public Administration Strategy, and neither it covers integrity plans stipulated under the Strategy. On the other side, neither the area of concessions nor Commission for Concessions are covered with the said strategies, therefore integrity plans does not apply to the area of granting concessions either. .

Recommendations – Strategic Framework

- 1) Introduce a monitoring mechanism for public discussions on privatisations of companies of special interest to the public (in the area of energy, transportation, tourism), which would enable the inclusion and acknowledgment of the opinions voiced during the public discussions, and imply also preparation of reports on the degree of adoption of proposals and arguments deriving from these discussions.
- 2) Insert measure in the Action Plan, under Objective #42, which will refer to the provision of expert support for the Commission for Monitoring and Supervision of the Privatisation Process (e.g. through internships, internal job advertising, elimination of budget constraints, etc.)
- 3) In the Action Plan, within its chapter relating to the privatisation process, insert measures that would include the Investment and Development Fund in strategic aspects of privatisation process, including monitoring of privatisation contracts concluded even outside its portfolio.
- 4) Issues related to concession should be addressed through amending the Action Plan, under Chapter on Private sector.
- 5) Provide for integrity plans to be equally effectively introduced in both public and private sector.

¹⁴ <http://www.irfcg.me/>

Implementation of Legal and Institutional Framework

Situation Analysis

In regard to the implementation of legal and institutional framework concerning the area of privatisation, the risk behaviour usually occurs in the following aspects:

- Lack of information and involvement on the part of the public in the privatization processes, and lack of information about the use of funds obtained in privatisation process, poor access to information in the possession of the Council for Privatization and Capital Projects, including not only the decisions about privatisation, but also all supplementary documentation.
- Control of the origin of money invested in privatisation; control of the privatisation process, especially the part related to use of the resources obtained from the privatization; monitoring contract implementation, particularly in the sectors of transport, energy and tourism; control of the implementation of measures to mitigate the negative effects of privatisation (the social effects and effects on the environment).

Recommendations – Implementation of Legal and Institutional Framework

Transparency of the privatisation process:

- 1) Provide the public with the maximum access to information about the privatization process, including decisions and documents upon which privatization is carried out, through their regular publication on the website of the Council for Privatization and Capital Projects.
- 2) Publish on the website of the Council for Privatization and Capital Projects the reports of the State Audit Institution (SAI), which refer to the use of funds obtained through privatisation that go into the state budget.
- 3) Systematically consider proposals and suggestions arising from public discussions on the privatisation process, and ensure that a report on the discussion thereof must be published.

Monitoring and supervision:

- 4) Within the competences of the Administration for Prevention of Money-Laundering and Terrorism Financing, in particular require the verification of the origin of money invested in privatization.
- 5) The report of the Council on Privatisation and Capital Project to include the part that would refer to the implementation of contracts and breach of contractual obligations by the new owners, as well as the SAI findings relating to the revision of the state budget in the part on the privatisation revenues and expenditures;
- 6) The system of monitoring, which would include the reports of non-governmental sector, should be established for the privatization in sectors, such as energy, tourism, maritime affairs, transport and telecommunications, agriculture, etc.;
- 7) Monitor the implementation of measures to mitigate the negative effects of privatisation on social position of employees and environment (prescribed in the privatization contracts), as well as the influence the budget allocations given to privatized companies exert on the Montenegrin economy.

Human Resource Policy

Situation Analysis

The human resource policy in the Council on Privatisation and Capital Projects is not regulated by the same legal framework applying to civil servants and state employees¹⁵. The expert part of the activities is the responsibility of the Prime Minister's Advisor for privatisation and capital projects, also performing the duties of the Secretary to the Council. The members of the Council are not appointed according to their expertise but according to the portfolio or through an internal appointment (such as representatives of trade union organisations). Article 7 of the Decision on the scope of work and composition of the Council stipulates that the Council, or the President of the Council, may form expert bodies and engage expert consultants to consider matters under the competences of the Council. Consortium led by the Faculty of Economics, University of Montenegro in Podgorica was established to perform control of investments in privatised companies via public tenders and compliance with contractual obligations. Furthermore, working groups have been established to control the privatized companies not covered by the Report of the consortium.

Accordingly, the criteria for the appointment of members of the Council and related unclear formulations contained in Article 7 of the Decision on the scope of work and composition of the Council represent particularly vulnerable area for the corruption occurrence.

Due to the manner of appointment, members of the parliamentary Commission for Monitoring and Supervision of the Privatisation Process, as a rule, do not have expertise in the area of privatisation. Administrative support to the Commission is provided by Parliament's technical services, adding to the workload of these services. Thus, the Commission does not have sufficient expertise or staff capacities to perform its tasks within the scope of its competences, partly due to the manner of appointment of its members, and partly due to failing to provide for the resources within the existing budget limitations to support this working body.

Members of the Council on Privatisation and Capital Investment, and Commission on Concessions are appointed by the Government, while the executive director of the Investment-Development Fund is indirectly elected by the Government, given that the Fund is a joint stock company owned by the Government. The lack of clear criteria for the appointment of the Council members, lack of transparency of the appointment procedure, as well as the lack of provisions limiting the duration of members' mandate (except for in the Commission on Concessions, with five-year term of office, with the possibility to be elected in two successive mandates) create the risk of political influence both on the appointment of members and passage of decisions in these institutions.

Recommendations – Human Resource Policy

- 1) Introduce clear criteria for the election of members of bodies and institutions competent for the privatization process, who are appointed or elected by the Government (members of the Council for Privatization and Capital Projects and Directors of Investment-Development Fund), provide for transparency of the process and limit the mandate to those persons.
- 2) Provide for the transparency in the appointment of expert consultants in the Council and make it a subject to examination.

¹⁵ Decision on the scope of work and composition of the Council for Privatization and Capital Projects (Official Gazette of the Republic of Montenegro 83/09, 04/11)

- 3) Provide for the transparency in the appointment of expert consultants of the Commission for Monitoring and Supervision of the Privatisation Process.

Relation towards the results of the existing researches in the Special Risk Areas

Situation Analysis

Numerous reports and media sources deal with risks in the area of privatisation¹⁶. These reports identify the lack of will to fight corruption and lack of norms governing the integrity system and anticorruption control to be the causes of the occurrence of these phenomena. That especially applies to the issue of integrity of members of the Council on Privatisation and Capital Projects, the experts that the Privatisation Council engages in the situations bearing risks in terms of bribery and trading in influence and abuse of office.

Recommendations – Relation towards the results of the existing researches in the Special Risk Areas

- 1) Introduce the statements of integrity for members of the Council on Privatisation and Capital Investment and ensure full implementation of measures for prevention of conflict of interest (which consider the membership of a public official in the Council as the exercise of two or more public functions);
- 2) Provide for the transparency in the process of investment control in privatized companies, through a transparent procedure of election of consortium and working groups which exercise control, and regular publishing of control findings and reports on conducted controls. Introduce integrity contracts for members of the Privatisation Council and improve the supervision of income, origin of property and conflict of interest.

¹⁶ BTI 2010 – Montenegro Country Report; Nations in Transit 2009; *Democracy Index Montenegro 2009*; *SIGMA Assessment Montenegro 2010*; *USAID Corruption Assessment - Montenegro, 2009*; *Global Integrity Scorecard - Montenegro 2008*; European Commission, Brussels, 9.11. 2010, Communication from the Commission to the European Parliament and the Council, Commission Opinion on Montenegro's application for membership of the European Union; Greco Third evaluation round (December 2010);

2 PUBLIC PROCUREMENT

Legal Framework

Situation Analysis

Draft Law on Public Procurement¹⁷, which is currently in the procedure, is, to a great extent, in compliance with the relevant EU legislation¹⁸. However, the new legislative solutions contain certain critical limitations that create the risk area for the corruption occurrence, such as follows:

The provisions relating to the subject of control of the Commission for Public Procurements exceeding the amount of EUR 500,000, do not define precisely the manner to undertake certain measures in the case the procedure is carried out contrary to the provisions of the law. It is not defined in which cases it will be decided to cancel the procedure completely or partially, or what is meant by necessary measures.

No exemptions of business organizations or legal persons from the law were specified, neither confidential procurements, nor exemptions for defence and security procurements¹⁹.

In terms of transparency, the law does not cover mandatory publication of approval issued by a competent authority to contracting authorities, along with all annexes to public contracts that follow the amending of the contract provisions after its signing; also, it is not defined when to use a restricted public procurement procedure.

Negotiated procedure without prior publication of a public call for competition, when it comes to procurement of goods, services or award of works, leaves space for various interpretations, enabling the awarding of the amounts considered risky for the occurrence of corruption and conflict of interests and favouring certain companies that are continuously hired by individual contracting parties.

When it comes to tender documents, there is the space for amending the documents, which, despite legally binding limitations, represents the risk space, given that institutions have established the practice of altering the appraised value defined under the call.

There are no defined minimum requirements for an alternative tender or more precise definition of an alternative tender and criteria that need to be met by economically most advantageous tender, which leaves space for risk-taking behaviour.

The obligation to report corruptive activities applies only to the course of the proceeding before the decision on awarding public procurements is made, while there are no measures that could refer to a possible corruption, in all its forms, after signing the contract.

¹⁷ Ibid.

¹⁸ Identification number of the Statement: MF-IU/PZ/11/15

¹⁹ Article 3 para 6 on the purchase of weapons, munitions and other items necessary for the defence and security in Montenegro.

The law does not define the situation where the conflict of interest is discovered after the signing of the contract – and whether or not a new tender is published and what happens to the public procurement costs occurred until that moment.

Recommendations – Legal Framework

- 1) Prescribe that the State Commission for the Control of Public Procurement Procedures is obliged to implement measures in the case of determined irregularities in public procurements exceeding EUR 500,000, as well as the contents of measures and the cases in which they are applied (complete or partial cancellation).
- 2) Specify to which business organizations and legal persons the exemptions from the law are applied, what kind of confidential procurements it is about, and which segments of public procurements are exempted when it comes to defence and security.
- 3) Prescribe mandatory publication of prior approval issued by the competent authority to the contracting party, as well as publication of all annexes to public contracts that require amending of contract provisions after its signing; define the cases when to use the open public procurement procedure.
- 4) Limit the number and total amount of award procedures of related and additional services without prior publication of the public notice for competition that are not covered under the original public procurement contract, or to anticipate it in exceptional cases defined under the law.
- 5) Prescribe that the tender documents, in its entirety, must not be changed after the expiration of the deadline for the submission of bids.
- 6) Stipulate the minimum requirements for an alternative tender or some other more specific definition of what an alternative tender means and what is considered under the most economically advantageous tender.
- 7) Introduce a policy of reporting all forms of corruption even after signing the contract, as well as measures to be taken to prevent the occurrence of corruption;
- 8) Introduce a policy to handle conflict of interests arising after the signing of the contract.

Institutional Framework

Situation Analysis

Institutional framework in public procurement, in addition to the Ministry of Finance, refers to the Public Procurement Directorate and the Commission for the Control of Public Procurement Procedures.

Public Procurement Directorate. Public Procurement Directorate is organized in a way that it includes Public Procurement Affairs Department and Administrative and Financial Affairs Department, whereby the latter department operates as a support to the former department. Such an organization of the Directorate may reduce the effectiveness of the authority, particularly when taking into consideration the organizational structure of working posts in the Directorate, the existing systematization of working posts and division of responsibilities. Flat organizational structure of both departments, although effective in the initial period when the Directorate was established (a period of non-standardized procedures, and a limited number of

employees), carries a risk of inefficient functioning of the Directorate in the new institutional framework proposed under the Draft Law on Public Procurement²⁰.

Commission for Control of Public Procurement Procedures. Within the Commission, only one organizational unit operates within the flat organizational structure, in which all employees perform their duties in accordance with the instructions of the Secretary-General. This organizational structure is appropriate, because, in these circumstances, the Commission manages to carry out its task duly. However, it is estimated that the Commission lacks an independent consultant who would strengthen the structure, in accordance with the new responsibilities of the Commission envisaged under the new Law.

Recommendations – Institutional Framework

- 1) Design and introduce an appropriate model of the organizational structure of the Public Procurement Directorate, which would enable the transformation of the existing flat structure into a vertical one (or network), in accordance with the competences and capacities for the implementation of the new legal framework²¹.
- 2) The Commission for the Control of Public Procurement Procedures should institutionalize the following:
(a) monitoring and control measures; and (b) legal affairs and policy formulation (measures).

Strategic Framework

Situation Analysis

A separate Strategy for Public Procurement System Development for the period 2011- 2014 should be adopted by the end of 2011. In addition, the adoption of the new Law on Public Procurement is envisaged. Having this in mind, and with the aim to strengthen the public procurement system, we believe that, apart from the adoption of a separate Strategy and new Law on Public Procurement, it is necessary to work on further strengthening the role of the State Audit Institution in the public procurement system, particularly by defining appropriate measures for the SAI in the Strategy for the Fight against Corruption and the accompanying Action Plan.

The Report of the Tripartite Commission does not provide an insight into the structure of investigations conducted according to the areas laid down in the Action Plan, which further hinders the use of these records for the purpose of improving the public procurement system.

Recommendations – Strategic Framework

- 1) The Strategy for the Fight Against Corruption and the Action Plan for its implementation should introduce a measure for further strengthening the role of the State Audit Institution in the public procurement system, including the decision-making process and review of the Public Procurement Strategy and harmonization of the new Law on Public Procurements (Articles 117 and 118) with the European Directives.

²⁰ Following the adoption of the Law on Public Procurement and in line with the reports prepared by the experts engaged in the IPA project, a new systematization of the Public Procurement Directorate with the introduction of new working positions will be prepared.

²¹ Ibid. 4

- 2) Include in the Report of the Tripartite Commission the structure of investigations conducted by the areas from the Action Plan, including public procurements.

Implementation of Legal and Institutional Framework

Situation Analysis

It has already been mentioned that the special Strategy for the Development of the Public Procurement System is planned to be adopted by the year 2011. The activities related to the training have been conducted through the IPA project²². Also, the legal and institutional framework has been largely improved in the Draft Law on Public Procurement.

The Draft Law on Public Procurement includes a number of changes that will affect the possibility of its implementation. It particularly refers to the Chapter VII (Articles 146 and 147) - *The Exercise of the Inspection Control over the Implementation of this Law*, where it refers to the Law on Inspection Control of Montenegro²³, and which does not contain any anti-corruption provisions, and thus again creates the space for the occurrence of risk-taking behaviour;

According to the Third GRECO Evaluation Round Report for Montenegro, in the part related to incriminations²⁴, it was stated that the existing generally corruption-related provisions provide for an appropriate basis for criminal prosecution, and that corruption cases are given absolute priority by the responsible courts. However, when it comes to monitoring the implementation of the Criminal Code of Montenegro, in its part related to the cases from the public procurement area, the report of the Tripartite Commission does not offer an overview of processed criminal cases in a structured manner (by appeals of SAI and other entities), which hinders monitoring, evaluation and further improvement of the public procurement system.

Reduction of the space for the occurrence of risk-taking behaviours and reinforcement of the public procurement system in Montenegro would be achieved through strengthening the competences of the SAI, which currently monitors the implementation of public procurements from a legal angle, and not from the angle of effective and efficient use of budget resources, and also through strengthening inspection control of the Public Procurement Directorate.

Recommendations – Implementation of Legal and Institutional Framework

- 1) Reinforce the supervision over the implementation of the new Law on Public Procurement, in terms of more consistent application of anticorruption provisions also when it comes to the inspection supervision.

²² *Further Development and Strengthening of the Public Procurement System in Montenegro*, EuropeAid/126525/C/SER/ME, Draft Recommendations for PPD and PPC, 17 May 2010

²³ "Sl. list RCG", 39/03, 76/09.

²⁴

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%297_Montenegro_One_ME.pdf

- 2) The Report of the Tripartite Commission should present in a structured manner investigations initiated on the basis of notifications and reports of the State Audit Institution.
- 3) Strengthen the control of the public procurement system and processes related to the budget expenditures (effectiveness and efficiency of use of budget resources) conducted by SAI, control which is under the jurisdiction of the Public Procurement Directorate (by hiring an independent supervision team).

Human Resource Policy

Situation Analysis

Public Procurement Directorate. The number of employees in the Directorate's centralized structure is not sufficient to keep the pace with changes and improvements stipulated in the Law, to comply with the requirements and principles of the EU; particularly having in mind that the Directorate is responsible for the conduct of public procurements within 980 institutions. Although the persons with a degree obtained in law, economics or other faculty of social sciences, are encouraged to apply for the highest positions in the Directorate, it can be risky, because there is no guarantee that the person has a specialization in policy formulation and planning of the basic legislative framework. In addition, there is a shortage of people with the technical (engineering) specialized knowledge, as well as the employees who speak English.

Commission for the Control of Public Procurement Procedures. There is no sufficient number of employees who would perform the affairs within the competences of the Commission. Currently the Commission has six employees, three of whom deal with the dispute settlement activities, including the Secretary of the Commission, determining sanctions under the complaints filed for the violation of the law, and having in mind that these are not their only duties. In line with the existing systematization, one more working post, which has not been filled yet, is stipulated (Independent Advisor) with the same competences. Two trainees have been undergoing a professional training in the Commission. If not addressed on time, this lack of the personnel will result in overlapping the responsibilities and opening up of a potentially risk area.

Although the Proposal for a new Law on Public Procurement defines that the chair and members of the Commission are appointed by the Government on the basis of an open competition, under the condition that candidates have at least 5 years of experience in public procurement, and that they perform their duties professionally, it seems that the current composition of the Commission has a significant advantage over potential candidates, and that it is not questionable at all whether the Commission will be re-elected or not in the same composition. This practice actually prevents the competition in terms of the selection of future members.

Recommendations – Human Resource Policy

- 1) Adopt a new Rulebook on internal organization and systematization of the Public Procurement Directorate; provide the Directorate with the staff support for help-desk department and *e-procurements* department; fill vacancies (or through internal transfers) with the staff of various professional/technical background (engineering, translation); strengthen personnel capacity for monitoring and control activities and policy and measures formulation activities.
- 2) The Commission for the Control of Public Procurements should, in the shortest possible period, fill vacancies in accordance with the existing systematization, by engaging an independent consultant and software expert.
- 3) During the election of a new composition of the Commission for the Control of Public Procurement Procedures, provide mobility of not only the experts in the field of public procurement *stricto sensu*, but also from other areas with professional requirements ensuring performance of this duty.

Relation towards the results of the existing researches in the Special Risk Areas

Situation Analysis

Various reports and media sources about risk-bearing occurrences in the area of public procurement ²⁵ in Montenegro claim that the existing system of control of public procurement leaves a wide space for corruption and reflects widespread distrust of the civil sector. It is generally regarded that most investigations dealt with petty bribery (bribes of no more than 20 EUR) of low and middle ranking officials and that there was no real will to fight grand corruption and to tackle corruption in particularly vulnerable sector areas (e.g. public procurement, urban planning and others).

The public assessments point out that very often the remarks of the media and civil society either are not considered or end up in legal-institutional "conundrum" between the Commission for the Control of Public Procurement Procedures - Public Procurement Directorate - the Administrative Court.²⁶

Corruption risk areas considered risky for the corruption occurrence are as follows:

- The lack of transparency as to the criteria for the selection of experts to do the assessment in public procurement; lack of transparency of the provisions on reviewing decisions of the Public Procurement Directorate and the approach related to the access to information in the possession of the Government²⁷.
- The lack of involvement of NGOs and the media in the process of monitoring and control of public procurement procedures²⁸.

²⁵ BTI 2010 – Montenegro Country Report; Nations in Transit 2009; *Democracy Index Montenegro 2009*; *SIGMA Assessment Montenegro 2010*; *USAID Corruption Assessment - Montenegro, 2009*; *Global Integrity Scorecard - Montenegro 2008*; European Commission, Brussels, 9.11. 2010, Communication from the Commission to the European Parliament and the Council, Commission Opinion on Montenegro's application for membership of the European Union; Greco Third evaluation round (December 2010);

²⁶ Although, according to the opinion of the competent institutions, the competences of these institutions are clearly defined under the law.

²⁷ Also, in the opinion of competent institution, all reports and decisions are published on the website

²⁸ Recently, the competent institution designated a person to deal with the NGO sector

- Verification of integrity, income, property, gifts given to the members of the tender commissions, Public Procurement Directorate, Commission for the Control of Public Procurement Procedures, members of their families in the sense of the Law on Prevention of Conflict of Interests.

Recommendations – Relation towards the results of the existing researches in the Special Risk Areas

- 1) Selection of experts to do the assessment in public procurements should be made more transparent
- 2) Monitoring of public procurement procedures by NGO sector should be set up on permanent grounds.
- 3) Establish the system of integrity check in public procurement for members of the Public Procurement Directorate and Commission for the Control of Public Procurement Procedures during their recruitment and working relation through contracts or statements of integrity.

3 URBAN PLANNING

Legal Framework

Situation Analysis

Planning and object construction area in Montenegro is defined under the Law on Spatial Planning and Object Construction²⁹. This law sets forth two types of planning documents: state and local planning documents.

The Ministry of Sustainable Development and Tourism is in charge of preparation activities related to drafting the national planning documents, which are adopted by the Government, i.e. Parliament of Montenegro, while an organ of the local self-government is in charge of preparation activities related to drafting the local planning documents, and they are adopted by local parliaments.

The Law on Spatial Planning and Construction contains provisions which are essential for preventing corruption. They are primarily related to the transparency of the planning documents adoption, through participation of and informing the public. However, these provisions are not consistently accompanied by the appropriate institutional mechanism necessary for their implementation.

The Law defines public participation in the preparation of planning documents, monitoring of the status of the space, the process of developing of the planning document, the manner of conducting a public discussion. The Ministry of Sustainable Development and Tourism and an administrative authority, that is, local self government authority exercise the control over the implementation of the Law and other regulations in the field of spatial planning and construction.

Significant reforms have been taken in the field of spatial planning and construction aimed at eliminating business barriers in this area, raising the level of control and the preservation of the space, along with the normative deregulation within this sector. New legal solutions specify that the planning documents also include a strategic environmental impact assessment. Furthermore, planning documents contain requirements and guidelines for construction of objects.

However, risk areas for potential corruption still exist in the legislative framework in urban planning, and can be listed as follows:

Anti-corruption provisions relating to the urban planning are not explicitly emphasized, or sufficiently visible and clear in narrow or broader legal framework, thus their importance and implementation cannot be adequately neither strategically nor institutionally monitored.

The Law on Spatial Planning and Construction still contains a quite complex procedure for obtaining construction permits, partially due to the existence of other regulations pertaining to the construction of structures, which prescribe mandatory requirements and approvals for obtaining construction permits.

²⁹ Official Gazette of Montenegro 51/08 (22 August 2008).

Planning documents are adopted under a strictly defined procedure, requiring public discussion, as an obligatory phase. However, public discussions are most often only of a formal character and not substantive nature. Also, no direct impact of public discussions on the adopted planning documents has been visible.

Recommendations – Legal Framework

- 1) Clearly and significantly systematize anti-corruption provisions during the upcoming amendments to the Law on Spatial Planning and Construction, and provide for legal grounds to set up an institutional framework for their implementation.
- 2) Simplify the procedure for issuing a construction permit, through better concentration of responsibilities.
- 3) Legally bind the entities in charge of developing planning documentation to do an impact assessment of public discussions before making a decision on the adoption of the plan.

Institutional Framework

Situation Analysis

Within the Ministry of Sustainable Development and Tourism, there is a Sector for space management, which consists of the following units: Department for Monitoring and Development, Department for the Adoption of State Planning Documents, Department for Local Planning Documents

The institutional framework is well defined with clearly specified competences. The Parliament of Montenegro, that is, the Government of Montenegro adopts the state planning documents, while the local parliaments adopt local planning documents. Reports on the status of spatial planning and annual programs of spatial development are adopted at the state and local level; equally, the information systems on the space are conducted and building and occupancy permits are issued at the state and local level. The inspection control is under the jurisdiction of the Ministry of Sustainable Development and Tourism and is organized through three inspectorates: urban planning, construction and environmental protection inspectorate. The Ministry may entrust the inspection control affairs to the municipalities.

Despite the above developments, there is the lack of a trained unit within the organizational structure that would control the implementation of anti-corruption measures in urbanism, and above all, anti-corruption provisions stipulated in the legislative framework, Action plan for the fight against corruption in the area of urban planning and construction and code of ethics as well. It appears that the Internal Audit Department within the Ministry of Sustainable Development and Tourism is the most appropriate for performing these responsibilities, so it is necessary to strengthen its capacity.

In addition, the level of coordination between the Ministry and other institutions involved in the activities of spatial planning is not satisfactory, and for this reason it is necessary to set up an institutional mechanism for coordination and information sharing among them.

Recommendations – Institutional Framework

- 1) Strengthen the technical capacity of the Internal Audit Department of the Ministry of Sustainable Development and Tourism for the implementation of anti-corruption measures.
- 2) Define the cooperation and coordination between the Ministry and all the institutions ensure the data and other necessary elements for spatial planning.

Strategic Framework

Situation Analysis

In line with the national strategic framework - Strategy and Action Plan for Fight against Corruption and Organized Crime, in 2009, the former Ministry of Spatial Development and Environmental Protection adopted Action plan to combat corruption in the field of urban planning and construction. In the meantime, action plans for fight against corruption containing measures to combat corruption in urbanism are adopted at the local level.

However, the adopted action plans do not fully serve as a high quality instrument for the implementation of the anti-corruption legislation in the field of urban planning. They should be simplified in terms of clearly specifying priority objectives, measures and quality indicators that will show the effectiveness of each measure.

The lack of integrity plans increases the risk of corruption in this area.

Recommendations – Strategic Framework

- 1) Establish quality indicators for measuring the effectiveness of the implementation of the Action plan to combat corruption in urban planning, especially in terms of: the adherence to procedures, the efficiency of services, efficiency of individuals and others.)
- 2) Introduce elements of integrity in the process of amending the Law on Spatial Planning and Object Construction.

Implementation of Legal and Institutional Framework

Situation Analysis

Although the quality of anticorruption measures in the legal framework governing this area has been significantly improved, they are not implemented in a satisfactory manner. First of all, it is the result of the lack of administrative capacity, insufficiently trained staff to combat corruption and the lack of adequate system of control over the implementation of anti-corruption legislation provisions. In regard to this issue, visible is the lack of consultation with the findings of the NGO sector and joint monitoring of the implementation of regulations in this area in cooperation with the NGO sector.

The lack of capacity of the competent inspectorate under the Ministry of Sustainable Development and Tourism can often undermine the quality of the inspection control. Currently, the competences of the

inspection control are transferred to the Capital City, which can be applied as a model in other local-self governments, especially in those with fairly good administrative capacity in this area.

The automation of procedures serves as a very good instrument for combating corruption in all the subject areas within the Ministry of Sustainable Development and Tourism, as well as in the local secretariats for urban planning and communal services. Although activities on the implementation of adequate software solutions have already been undertaken, there is still a shortage of complete databases that would combine the information on all types of permits and planning documents.

Recommendations – Implementation of Legal and Institutional Framework

- 1) Establish a control mechanism for the implementation of the Law on Spatial Planning and Construction (after the adoption of amendments), which would contribute to eliminating the business barriers and other procedural complications related to obtaining permits, and include the NGO sector in monitoring the implementation of the law.
- 2) Strengthen the inspection supervision and control over the work of the relevant inspectorates, through enhancement of staff capacity and technical equipment, and examine the appropriateness of entrusting the state competences in the inspection control to the local self-governments, with clearly defined criteria for the entrustment of the said affairs and the abuse prevention mechanisms.
- 3) Conduct the full automation of procedures in subject areas of the Ministry of Sustainable Development and Tourism and establish and regularly update an online database with the information on the issued building and occupancy permits, planning documents and cadastral bases.

Human Resource Policy

Situation Analysis

The Ministry of Sustainable Development and Tourism has paid lots of attention to the development of human resources and equipping them with the needed skills to fight against corruption. However, it is not the case in the secretariats of urban planning in local self-governments.

There has been a considerable lack of staff and technical capacity in urban planning, especially in northern municipalities of Montenegro, which is reflected in the efficiency and legality of the proceedings.

It was noted that the law enforcement authorities (police, prosecutor's office) do not have sufficient capacity to conduct quality investigations in the field of urban planning. Also, the Report of the Tripartite Commission does not mention specifically to which areas the statistics refers, and thus it is unknown how many investigations for criminal acts with elements of corruption are related to the field of urban planning.

Recommendations – Human Resource Policy

- 1) Improve the administrative capacity of local-self government secretariats for the fight against corruption in urban planning

- 2) Introduce a reward system to inspectorates in charge of performing supervision in spatial planning and construction area (Environmental Inspectorate, Construction Inspectorate, Urbanism Inspectorate) and create conditions to fill vacant positions with quality employees and strengthen their capacities.
- 3) Strengthen human resource and professional capacity of the Police Directorate and Prosecutor's Office to investigate, detect and prosecute criminal acts with elements of corruption in urban planning.

Relation towards the results of the existing researches in the Special Risk Areas

We analyzed about 20 different researches and reports, which more or less tackle urbanism. Here we highlight the most referential sources:

Analytical Report of the European Commission in 2010 identifies spatial planning as an area susceptible to corruption. *Capacity and Integrity Assessment of the Public Administration Sector in Montenegro (DACI, 2010)* identifies construction permits as an example of high-risk areas. *2009 Montenegro Progress Report by the European Commission* indicates the lack of monitoring in the urban planning area. *Analysis of Corruption and Business Barriers between the Public and Private Sectors in Montenegro (DACI, 2009)* is relevant to determine the current presence of corruption in several areas. Also, some of its parts provide the basis for identifying the risk of corruption in spatial planning. *Corruption Assessment: Montenegro (USAID, 2009)* provides for a complete picture of the state of corruption in spatial planning. *Corruption in Planning and Urban Planning, Mans_2011*, analyzes the state of corruption in the process of preparing plans, adopting plans, obtaining building permit, illegal construction, and obtaining occupancy permit. Several corruption case studies are presented in the document; *Integrity and Capacity Assessment of the Public Administration in Montenegro (DACI, 2009)* identifies obtaining construction permits as one of the most vulnerable areas in urban planning.

Recommendation – Relation towards the results of the existing researches in the Special Risk Areas

- Establish a common mechanism for monitoring of the adopted measures and improving the current strategic framework in the field of urban planning in cooperation with the NGO sector.

4 EDUCATION

Legal Framework

Situation Analysis

The existing legal provisions governing the procedure for the election of the management bodies of educational institutions do not contain sufficient requirements in terms of integrity. In this sense, there are no conditions or restrictions that could be applied in the case of the foundation of schools by a natural person, the election of principals or school board. These conditions or restrictions should apply to the question of the integrity of persons involved in these processes.

The election procedure of principals is amended with the new amendments to the General Law on Education. In fact, a school board announces a public competition, which implies meeting legal requirements (for example, at least 5 years of work experience, and training for principals). In addition, each candidate is required to submit a Plan for improving the quality of education system of the institution. Upon the completion of the legal procedure, the Minister appoints the principals of the schools³⁰. There is no written act determining the method and conditions for the selection of principals by the minister. A principle may be selected in two ways: 1) prescribe the precise procedure for the election of principals by the Minister, in a way to limit discretionary authorities of the Minister in the procedure; 2) set forth the procedure where a principle is elected by the School Board, while the line Minister gives consent to the decision of the School Board. The latter possibility had already been in practice before the recent changes occurred and it would have come into use more easily than the former option.

Teachers do not fall under the legal definition of civil servants or employees. For this reason, these persons do not enjoy full protection in the cases when they want to report any suspicions of corruption. The fact that there has been no prescribed internal procedure to report corruption cases represents a major disadvantage.

Nevertheless, a significant progress has been made in this sense. In fact, the Action Plan for the Fight against Corruption envisages a series of measures related to increasing awareness of corruption in education, which were already implemented. Lectures and seminar on corruption have been organized, as well as media campaigns to prevent this phenomenon, by printing brochures and posters with telephone numbers that people can call to report corruptive activities, and which were later distributed to a number of educational institutions. The Education Inspectorate has established a special telephone for reporting corruption. It should be clear that it is not the intention to minimize the efforts made in this sense, but to emphasize a systematic omission, which is the lack of prescribed internal procedures in the form of a Rulebook or any other act³¹.

³⁰ Representatives of the Ministry of Education and Sports are of the opinion that the procedure for the selection of principals is precisely defined under the General Law on Education, as well as the Law on General Administrative Procedure.

³¹ Ministry of Education and Sports considers that the teaching personnel has been sufficiently protected through the amendments to the Labour Law.

The Law on Vocational Education³² also governs the issue of part-time students. According to the law, these students pay a fee to sit for an exam.³³The law provides that such persons pay a charge for installation. According to the school rulebooks, one part of the fee goes to the school and the other on a teacher who takes part in the procedure of questioning. This solution is very problematic, because we have the situation where the teacher participating in the questioning is paid with the money taken from the candidate he/she is questioning.

The amendments to the Statute of the University of Montenegro³⁴, imply that internal financial controls at the University will be carried out in accordance with the regulations governing the accounting, auditing and internal financial controls. The sources of funding of the University come from the budget, payments, donations and other income. There is no obligation for the University to make the information on income available to the public, and a majority of faculties do not publish income from donations. For the same reason, incomes from other sources are also problematic (consulting services, various contracts and the like).

There has been no data on whether or not the institutions of higher education have undertaken the measures to develop an electronic database and publish annual records on the financial status of the academic staff.

Recommendations – Legal Framework

- 1) An aspect of integrity should be introduced in the existing legal framework during the foundation of schools, the election of a School Board and principals.
- 2) Enhance the transparency in the implementation of the General Law on Education, particularly in its part related to the election of principals.
- 3) Ensure the protection of persons employed in the education system wishing to report suspicions of corruption.
- 4) Adopt secondary legislation regulating an internal procedure for reporting corruption by employees.
- 5) Amend secondary legislation related to the financing of sitting exams for part-time students.
- 6) Require the disclosure of all the university income, including donations and other income.
- 7) Introduce a legal obligation for the academic staff to report their property.

Institutional Framework

Situation Analysis

The Council for Higher Education issues a certificate on accreditation of higher education institutions. An institution or a study programme is a subject to re-accreditation within 5 years. Based on the report on the quality assessment of an institution, the Council also passes the decision on the re-accreditation. The Council establishes a commission that decides on granting accreditation or re-accreditation of a certain institution, after it verifies whether the institution meets accreditation requirements. Although the work of the

³² The Law on Vocational Education, Official Gazette of Montenegro 64/02, 49/07 and 45/10

³³ The Law on Vocational Education, Article 91.

³⁴ The Statute of the University of Montenegro, Decision of the Managing Board, no. 253 as of 06 February .2004 – approved by the Government no. 02-1497 from 25 March 2005 and Decision of the Managing Board, no. 01-417 from 06 February 2006– approved by the Government no. 03-3375 from 20 April 2006.

Council should be open to the public, and all of its conclusions available to the public, there are no concrete measures to turn the openness and transparency into practice.

Members of the Council for Higher Education, in accordance with the Law on Higher Education, are appointed by the Government, which leaves the space for a possible influence or conflict of interests when it comes to, for example, the accreditation of programmes or institutions that overlap in public and private higher education institutions.

The University of Montenegro is funded from the state budget and other sources (scholarships, grants, projects, contracts). Despite the fact that there are both, internal and external audits, conducted by the State Audit Institution, there is no satisfactory degree of transparency in the publication of results and monitoring of the audit results.

The university has also been working on the establishment of an instrument of the student ombudsman. In order for this institution to come into use in the right way, it is necessary to provide it with certain powers in terms of collecting reports on violations of university rules, and also on corruption, checking reported allegations and initiating certain procedures in the cases where there is evidence for illegal acts.

The organizational chart of the education system needs to highlight the formation of the Anti-Corruption Commission, that is, the Working Group as a body responsible for monitoring the implementation of the sectoral Action Plan for the Fight against Corruption in the field of education. The Commission is chaired by the Secretary of the Ministry of Education and Sports and its members are the representatives of institutions responsible for the implementation of the sectoral action plan. Although the Commission has not yet elected a representative of parents, almost all the measures under the sectoral action plan were carried out. Nonetheless, the Commission, or the Ministry, does not publicly disclose the information on monitoring the implementation of the sectoral action plan.

Recommendations – Institutional Framework

- 1) Make the work of the Council for Higher Education transparent as to the accreditation and re-accreditation of higher education institutions.
- 2) Consider the manner of appointing the members of the Council for Higher Education aimed at professionalization and higher degree of independence from the executive authorities.
- 3) Hire an independent auditing firm to control the budget of higher education institutions, in accordance with the amended provisions of the law.
- 4) Establish the Student Ombudsman with a precise role in the prevention of corruption.
- 5) The work of the Anti-Corruption Commission (Working Group for monitoring the implementation of the Action Plan for the Fight against Corruption in education) needs to be made more transparent, i.e. publish the reports on monitoring the implementation of measures from the sectoral action plan.

Strategic Framework

Situation Analysis

According to the sectoral Action plan for the Fight against Corruption in education, the year of 2012 is the deadline for the adoption of the Integrity Plans in Education, and certain trainings in this area have already been conducted. However, the current legal void with regard to the integrity of employees and education institutions must be filled with short-term measures. In this sense, the Ministry of Education and Sports plans to adopt the Code on Ethics for those employed in the education by the end of September this year, and to put it into force as of 1 October, when the preparation of integrity plans begins.

The sectoral Action Plan is consistent with the national Action Plan. The objectives are listed, along with determined deadlines and key performance indicators. Indicators must be defined in such a way, that they provide for a periodic control of the implementation of measures. For example, in terms of a measure related to clear procedures and criteria in the accreditation and re-accreditation, the Rulebooks governing this area are determined as performance indicators. In order to fully control the implementation of this measure, it is also necessary to introduce verifications in the form of promptness in the process of accreditation and re-accreditation, as well as the verification of the adherence to this procedure and the number of complaints.

Recommendations – Strategic Framework

- 1) Ensure the implementation of measures that would introduce an element of integrity in the education system even before standardization of the integrity plans at the state level;
- 2) Along with defining clear key performance indicators arising from the sectoral Action Plan for the fight against corruption in education, ensure an efficient mechanism of permanent monitoring of the implementation of measures and their periodic evaluation.

Implementation of Legal and Institutional Framework

Situation Analysis

The teachers are legally obliged to report on their additional activities to the Education Inspectorate. According to the data of the Education Inspectorate there were no reports related to the additional activities of teachers. With the aim to record the additional activity, it is necessary to strengthen control, conduct external assessments, and establish a registry of teachers who do additional activities, which contains the names of students and the schools they come from. This could reduce the risk space created by the existing regulations. Namely, it happens that a teacher sends his/her students to other fellow-teacher, and he/she returns the same way. With the existence of the records, there would be more information available.

During the exams for part-time students, it is defined that a student bears the cost of the examination fees, and it is up to the schools to regulate the manner of division of these costs by their rulebooks (the funds are shared between a school where the examination takes place and a teacher who participates in the process of sitting exams). In this way, it leaves more space for risk occurrence, primarily in the area of conflict of interests given that a teacher receives significant funds, through the payments of a person he/she examines.³⁵

³⁵ Ministry of Education and Sports stated that this Decision also exists in other education systems, and that the objectivity of teachers or the quality of knowledge obtained is sometimes questionable.

The Code of Academic Ethics, as an act of anti-corruption nature, has no good sanction mechanism. The measures that may be imposed on the academic staff for the violation of the Code provisions are not adequate. It is a question whether or not the imposition of a public reprimand or a public condemnation represents a true and effective measure. There is a possibility of revocation of academic titles in the event a breach of the Code has occurred, and this process is the responsibility of the Senate. However, it is necessary to simplify the process in a way that a body, which is in charge of establishing the cases of the violation of the Code (Honour Court), is given the competences to impose the said measures. Furthermore, the Code should also introduce an obligation for the academic staff to report cases or suspicion of corruption, and to cooperate with the competent authorities. It is important to note that the Code and criteria for election in academic titles do not exclude the opportunity of hiring teaching staff that are related by blood to the subject teacher (e.g. when a father and son teach the same subject) ³⁶. Amendments to the Code should go in this direction.

There is no Code of Ethics for Teachers, but it is planned to be adopted. In this regard, seminars on preparation of codes of ethics for principals of education institutions were organized. A Working Group will produce a sample code of ethic that will be circulated to all the schools. The sample code may be further modified and adjusted to the needs of different schools.

There are no available data on the decisions of the Council for Higher Education on the procedure of accreditation and re-accreditation (how many institutions were issued licences or not). All conclusions and opinions of the Council should be public. However, it is not known if the Council has a guide on procedures to access the information, because it does not have the website.

In the education system as a whole, when it comes to the Guide for free access to information, there has been no training for employees or a competent body to monitor the implementation of the Law on Free Access to Information, thus, it is the general impression that ad hoc approach is used when it comes to this issue. No institution has monitoring in place in this area, and it seems that the reason for that lies in the fact that the law defined the Administrative Court as a second-instance body in the case of refusal, and thus many believe that monitoring is not required when the issue is within the competence of the court. Some institutions have already appointed a person responsible for the access to information. The University of Montenegro has not adjusted its guide with the new law yet.

Recommendations – Implementation of Legal and Institutional Framework

- 1) Establish a registry of teachers engaged in additional activities, in accordance with the law and secondary legislation.
- 2) Amend the Rulebook on exams for part-time students and introduce an obligation to avoid conflicts of interest.
- 3) Amend the Code of Academic Ethics in a way to provide for stricter sanctions for violations of the Code, and introduce the elements of integrity into the Criteria for election in academic titles.
- 4) Adopt the Code of Ethics for Teachers.
- 5) Promote transparency of work of the Council for Higher Education.
- 6) Introduce a mechanism for monitoring and reporting on the implementation of the Law on Free Access to Information in the education institutions and harmonize the Guide on free access to information of the University of Montenegro with the law.

³⁶ With this we do not mean to introduce bans for hiring kins at the faculties. However, according to international practice, a restrictive approach should be used in the situation when an employee is related by blood to his/her superior.

Human Resource Policy

Situation Analysis

When it comes to hiring teaching assistants, an overmuch involvement of the subject teacher seems to be problematic in the selection process, but also in the process of extending the contract, because his consent is required in both cases. This solution puts the emphasis on the subject teachers, which creates higher risk of undue influence.

There are no provisions on integrity that should be taken into consideration during the employment, while there is only one vague provision related to the conflict of interest in the Code of Academic Ethics tackling. When it comes to the procedure for election in certain academic titles, this area is closely regulated by the Statute and the Criteria for election in academic titles. The Decision of the Senate on election in academic titles is final, i.e. it is not the subject to appeal.

Recommendations – Human Resource Policy

- 1) Ensure objectivity and transparency in the procedure of engaging teaching assistants and among other things, with reducing the role of the opinion of the subject teacher.
- 2) Introduce modes of prior verifications during the admission of candidates for teaching assistants in order to avoid nepotism and cronyism, and during the working engagement avoid possibility of direct supervision by a relative.

Relation towards the results of the existing researches in the Special Risk Areas

Situation Analysis

The education field in Montenegro does not lack the researches, which are primarily conducted by the local research organizations. Most often the higher education is the subject to the researches.

The Research of the Directorate for Anti-Corruption Initiative (DACI)³⁷, identifies an activity related to sitting exams as the most common form of a corruptive activity/ The research of the University of Montenegro,³⁸ as the first reason reasons for existence of corruption in universities identified ineffective criminal prosecutions, followed by lack of clear procedures to combat corruption in higher education institutions.

The study on practical public policy “Policy on the Fight against Corruption in Education – effects of the application of the existing policy and recommendations for the adoption of the new one,”³⁹ which was prepared by the Centre for Monitoring (CEMI) was aimed to identify risk areas for corruption in the Montenegrin education institutions and institutions in charge of the issues of elementary, high school and

³⁷ Findings of the Research conducted in higher education institutions within the campaign “Delete the Virus – Report Corruption,” DACI, August 2007.

³⁸ Corruption in Higher Education, University of Montenegro, 2009

³⁹ <http://www.cemi.org.me/en/Ostudiji-pjp.html>

university students' living standard. The Study also covered proposals of some international organizations⁴⁰. The Study identified the following areas as key corruption risk areas: hiring of teaching staff, procurement and finances, admission of students and grading system. The Study offers some concrete measures for preventing corruption, such as: proposal to amend procedures and criteria for the appointment of members of the Council for Higher Education aimed at prevention of conflict of interests and others.

Recommendations – Relation towards the results of the existing researches in the Special Risk Areas

- 1) Strengthen the responsibility of the institution to introduce the system of verification of results of the researches and interviews (e.g. if a research identifies sitting exams as a corruption risk area, it would be necessary to get a feedback based on the verification of the said research results by relevant institutions.)
- 2) Introduce a system of monitoring the implementation of recommendations given in the researches, by the client.

⁴⁰ UNESCO, GTZ, Anti-Corruption Centre (U4), German Ministry for Economic Cooperation and Development

5 HEALTH

Legal Framework

Situation Analysis

The Ministry of Health adopted the Rulebook for performing additional activities of health workers in the network of health institutions,⁴¹ which details the rights of health workers on additional work. Generally, additional work is possible for all areas, but primarily it is provided for specialist examinations, where it is determined that there are large waiting lists in the network of health facilities. However, additional work is not limited to specific number of hours, and there is a potential for conflict of interests when it comes to working in public and private institutions.⁴²

Of course, there is a number of secondary legislation and other regulations that complement the legal framework in the health area. However, there are no prescribed internal procedures for reporting corruption by employees in the health sector, or the fact that no specific initiatives have been undertaken in this direction. Furthermore, another problem lies in the fact that health care workers (except managers/heads of institutions) do not fall under the concept of civil servants⁴³, and, as a result, they do not have adequate protection even if they think of reporting any suspicions of corruption⁴⁴. However, although it is not recommended that health workers fall under the concept of civil servants, it is necessary, through the Labour Law and in line with internal rules, to ensure their protection in the case of reporting of all types of irregularities.

Also, there is the shortage of the secondary legislation that would regulate the relationship between doctors and pharmaceutical companies, as well as clinical guide and guidelines that would include explicit requirements and instructions for all types of treatments, diagnostics and interventions in accordance with the disease symptoms and a referral of a general physician or specialist, and which would include the information on minimum duration of hospital stay for each procedure separately⁴⁵.

It should be noted that there is no Code of ethics for the employees of the Health Insurance Fund.

⁴¹ "Official Gazette of Montenegro 09/11"

⁴² Ministry of Health considers that the additional work does not leave the space for conflict of interests given the fact that it is defined by the Law on Health Care and Rulebook.

⁴³ The Law on Civil Servants and Employees, Official Gazette of Montenegro 50/08

⁴⁴ As a good example, what the lack of these acts means is the case when, during the programme of the Radio Crna Gora, a number of anonymous reports of corruption in health care was addressed to the Minister of Health. One part of complaints related to the Clinical and Hospital Centre (CHC) was addressed to the CC management. Specific names of doctors were disclosed in the reports. The management had no clear idea what the next steps could be, and since the complaints were anonymous and there was no evidence, they requested statements from the mentioned doctors, in which they denied their involvement in any forms of corruption. The full report is forwarded to the Minister (an excerpt from an interview with Professor Goran Nikolić, Clinical and Hospital Centre of Montenegro, 1.06.2011). The impression is that, in addition to fact that the lack of clear regulations on internal procedures and rules in these cases resulted in a rather weak response of the management, another reason was that the management just wanted to warn employees to cease and desist from such practices, without any desire to further process the complaints and sentence possible sanctions.

⁴⁵ This Act would prevent the occurrence of another risk phenomenon: keeping patients in hospitals unreasonably long time from corrupt reasons (one does not want to operate a patient without the bribe). Preparation of clinical guides and guidelines is underway as a part of the project of the World Bank.

Recommendations – Legal Framework

- 1) Limit additional work to a certain number of hours, and set up the system for monitoring the additional work.
- 2) Introduce into the proper legal framework a possibility to protect health workers who report corruption in the health care institutions, as well as internal channels and procedures to report corruption in health institutions.
- 3) Adopt a Rulebook on the relationship between doctors and pharmaceutical companies and their communication, as well as clinical guide and guidelines.
- 4) Adopt the Code of ethics for employees of the Health Insurance Fund.

Institutional Framework

Situation Analysis

Since 2010, the Health Insurance Fund is the budget beneficiary, which greatly hinders its work. It is reflected in the fact that the financing of the Fund depends on the adoption of the budget, because the Fund, to a certain extent, is conditioned with the dynamics of the adoption of the budget, so that it would be necessary to increase the autonomy of the Fund related to this issue.

The plan was to introduce the Commission for Accreditation of Health Institutions, because the composition, operation and decision making, as well as grading, issuing or revoking certificates of accreditation of health institutions is defined by the Ministry. There is a Sector in charge of quality control within the Ministry of Health, which was established in 2009 by the Department for Accreditation, and the accreditation itself will start only after the application of the quality system in healthcare.

The public procurement system is very complex, but at the same time it fully regulated by the Law on Public Procurement⁴⁶. Given the responsibilities of the Public Procurement Directorate and Commission for the Control of Public Procurement Procedures on one side, and competences of Montefarm and the Health Insurance Fund on the other side, along with the fact that procurements in health sector are specific, there is a need for a high level of coordination between these institutions.

Protector of Patients' Rights has started working at the outset of this year and it will take a certain period of time to evaluate the effects of its work. Pursuant to the Law on Protection of Patients' Rights, the Protector is appointed by the director of the institution⁴⁷, therefore, there is a justified fear that the beneficiaries of health services will not dare to lodge a complaint, because they believe that the Protector is under the influence, or subordinated to the director. A relatively small number of complaints and, in some cases none, confirm their fears.

Recommendations – Institutional Framework

⁴⁶ Official Gazette of Montenegro 46/06

⁴⁷ Ministry of Health: the appointment of the Protector is regulated under the Law on Protection of Patient Rights.

- 1) Ensure a greater financial autonomy of the Health Insurance Fund (i.e. ensure the HIF to manage its funds independently);
- 2) Strengthen the sector of Ministry of Health s for quality control when it comes to the fight against corruption ;
- 3) Introduce mechanisms for coordination between the Public Procurement Directorate, Commission for the Control of Public Procurement Procedures, Montefarm and the Health Insurance Fund (for example, formation of ad hoc teams for specific procurements and the like);
- 4) Ensure greater autonomy of the Protector for Patient Rights from the health care facility that appoints him/her.

Strategic Framework

Situation Analysis

The most important strategic document to combat corruption in the health sector is the sectoral Action Plan for the Fight against Corruption, which is in compliance with the national Action Plan (2010-2012). The sectoral action plan envisages the measures for improving the legal and institutional framework. One of the measures relates to the establishment of the Quality Control Sector in Health Care within the Ministry of Health. Pursuant to the same plan, the Health Care Quality Control Commission in health institutions is also established. However, the measures relating to the adoption of the integrity plans in health care do not exist in the sectoral action plan. Obviously, the need for the adoption of these standards is a *conditio sine qua non* for the successful prevention of corruption in health care. Strengthening the accountability of health institutions, and acting in accordance with moral and ethical principles both of individuals and institutions would contribute to reducing the risk of corruption.

Particular attention is also dedicated to the regulation of public procurement system through defining priorities for the purchase of medical equipment and investment in health care facilities. In addition, the same priorities need to be defined for the purchase of medical equipment.⁴⁸

Indicators for assessing the quality of work do not comply with the sectoral action plan for the fight against corruption in the health sector. Currently, there are no clinical guides and guidelines, and the method of accreditation of health institutions has not been defined yet, it is expected to be completed by 2012.

The measures related to the motivation of employees through the reward system have not been put into use yet. The reward system has not been regulated well because it is only defined within the Branch Collective Agreement, so that the incentives of health workers beyond the salary can go only up to 15%. When there would be in place the reward system based on the performance and quality of work, the employees would also be less inclined to get involved in corrupt activities.

Recommendations – Strategic Framework

- 1) Until integrity principles are established, introduce the adoption of the integrity plans for health care and its institutions in the sectoral Action plan, as a measure with accompanying indicators.

⁴⁸ Secondary and tertiary health care protection.

- 2) Determine measures for defining priorities in the purchase of medical equipment, the same way it is regulated for the purchase of medicines.
- 3) Develop indicators for assessing the quality of work, and report on the performance of appropriate measures in accordance with the indicators.
- 4) Establish a quality system of rewarding and motivating employees, as well as performance indicators.

Implementation of Legal and Institutional Framework

Situation Analysis

There is an impression that the awareness of the importance of implementation of relevant anti-corruption provisions or institutional framework is not sufficiently developed. It seems that the management in health care does not have real inputs on corruption, because only a few complaints on corruption have been reported, which unable them to identify critical areas and procedures. The Health Care Quality Commissions exist in all health care institutions, but they have not been active in planning and adoption of anti-corruption measures. In order to perform their tasks in a high quality manner, it is necessary to provide for personnel education and readiness to come to grips with unwanted activities. The reason for that lies in the fact that it is not generally understood that fight against corruption increases quality of health services, and in their work they have devoted more attention to other matters within their competence (e.g. organization of work).

It would be too much if we would say that there is a high threshold of tolerance for abuse and risk-bearing behaviour, but also we cannot talk about the existence of “zero” tolerance which should be strived for when it comes to such a negative phenomena such as corruption. This primarily refers to the matter of informal payments and drawing limits between the allowed and non-allowed. Also, the fact is that many health workers are familiar with corrupt practices of some of their colleagues, but they do not want to report the case of corruption to the competent authorities, although they claim they are ready to deal with eventual irregularities.

Article 94 of the Law on Medicines is of anticorruption character. In effect, this article regulates the relation between health workers and pharmaceutical companies. Monitoring of the implementation of Article 94 of the Law on Medicines does exist, but a big question is to which extent the provisions of this Article are observed in practice.

Standards set forth in the Medical Ethics and Deontology Code are clear, but there are no organized trainings to familiarize the employees with its contents and thus increase the level of awareness of ethics and moral reasoning. The Ministry of Health and Chamber of Physicians, pursuant to obligations from the Action Plan, only now plan to conduct trainings on the application of the Code of Ethics. The Code of Ethics is previously presented to the public at large in 2005, at the time it was adopted. However, it is necessary to familiarize the public or patients in more details with its contents, as well as the physicians, who are obliged to abide by the Code.

Almost all health care institutions have a Guide to access to information which is harmonized with the new Law on Free Access to Information (Official Gazette of Montenegro no. 68/05). However, in most institutions there is neither person specifically assigned to deal with requests for free access to information,

nor appropriate trainings for employees have been conducted yet. The impression is that in this fields thinking is made *ad hoc*, primarily because management is still not giving sufficient importance to this subject. Also, no institution conducts monitoring in this area, and it appears that the reason for that is the fact that the law has envisaged the Administrative Court to be a second-instance organ in case of refusal of request, and everyone is guided by the idea that for this reason monitoring is not necessary.

Recommendations - Implementation of Legal and Institutional Framework

- 1) Oblige Health Care Quality Commission and the Protector to report on the implementation of anti-corruption measures.
- 2) Introduce plans and programs of “zero tolerance” according to risk events.
- 3) Provide proper monitoring of the implementation of the legal provisions governing the relation between health workers and pharmaceutical companies.
- 4) Assign bodies or persons who would be in charge for interpreting and monitoring of the implementation of the Code.
- 5) Provide adequate and professional monitoring of the Law on Free Access to Information.

Human Resource Policy

Situation Analysis

There are clear criteria based on which candidates are scored for employment (years of studying, average mark, years in service). Director of institution appoints the Commission, which on the basis of the above mentioned criteria scores each candidate. The criteria are defined in the way that each candidate knows his/her own points in advance and for this reason there no complaints. However, the rewarding system is not efficient, and stimulation, which is regulated by the Branch Collective Agreement, is not worked out in details. The fact is that the incentives of health workers beyond the salary can go only up to 15%. Good example is a selected medical doctor who has been stimulated in the health care reform in a way that 50% of his/her salary is guaranteed, and the rest depends on capitation. The manner of election of directors is regulated by the Health Care Law and the statute of institution. However, it is not clear under which conditions the Minister gives consent, that is, based on which criteria he evaluates the submitted program and within what timeframe. Also, similar risk exists in decision-making by the board of directors⁴⁹.

Recommendations – Human Resource Policy

- 1) Improve rewarding system as part of human resources management in health care, in accordance with objective criteria.
- 2) Establish selection of directors in a way which guarantees transparency and objectivity of selection in all phases, not only in the part related to legal requirements.

Relation towards the results of the existing researches in the Special Risk Areas

⁴⁹ Ministry of Health: Procedure is transparent, conditions and clearly prescribed. Also the Minister evaluates the submitted programme before giving his consent to the decision of the board of directors about the choice of candidates.

Situation Analysis

Integrity assessment of health care system in Montenegro⁵⁰ is a research that covered both, patients and health professionals, by the use of “face-to-face interviews” as a research method. There were a number of questions, but the most interesting ones refer to informal payments. Regardless of the fact that in this research monetary and non-monetary payments are equalized, data referring to response to the question of giving gifts or money⁵¹ should be worrying. It seems that it is wrongly concluded that patients themselves in many cases voluntarily give gifts or money⁵². It is the case in certain situations (childbirth). However, the impression is that the concept of tradition and appreciation is misused as a cover for many abuses. Also, a small percentage of respondents stated that health workers directly asked for money. The reason for this may lay in the fact that respondents did not understand that it also may imply to some other situations like (unjustifiably long waiting for surgery or examination, a third party recommends the patient to give money which will ensure him/her better health service and the like).

In terms of recognition and respect for patients’ rights, the Action Plan also envisages the implementation of campaigns to raise awareness and research at the national level about customer satisfaction with health care services. There are boxes for complaints in all health care facilities, however, a small number of complaints indicates that perception of general public of corruption has not reached a satisfactory level.

Research of the Directorate for Anti-Corruption Initiative⁵³ puts health in the first place when it comes to corruption. Also, the DACI conducted another research⁵⁴, which testifies about the trend of slight decrease in perception when it comes to the presence of corruption in health care. According to the research conducted by the NGO CEMI,⁵⁵ doctors and hospital directors are in the first place when it comes to the exposure to corruption (44% of respondents).

Recommendations - Relation towards the results of the existing researches in the Special Risk Areas

- 1) Include relevant and applicable anti-corruption measures arising from the research findings in sectoral and national action plan.
- 2) Include obligation of cyclic research and periodic reporting on whether these measures, proposed on the basis on previous research, have led to the improvements in comparison to the previous situation.

⁵⁰ Research financed by the Ministry of Health and it was conducted with expert support of WHO and UNDP

⁵¹ Affirmative response from 49.4% interviewees, page 36

⁵² 76% of interviewed health care workers mention that the most common reason for giving presents or money to medical staff is patients’ initiative to do so, pages 49 and 50

⁵³ DACI, research results on corruption in higher school education within the campaign “Choose the Right Way and Report Corruption”, August 2007, p.6

⁵⁴ DACI, Results of the research in higher school education institutions, July 2009.

⁵⁵ Research on corruption (CEMI, 2009)

6 LOCAL SELF-GOVERNMENT

Legal Framework

Situation Analysis

Core legal framework that introduces the principles of transparency, professionalism and other principles of good governance make the Law on Local Self-Government⁵⁶ and the Law on Civil Servants and Employees⁵⁷ which duly applies to employees in local government bodies.

Also, the Code of Ethics of Civil Servants and Employees duly applies to employees of local government bodies.

In the wider legal framework, anti-corruption provisions that apply to local self-governments can be found in several laws, including (the Law on Free Access to Information, the Public Procurement Law, and others.).

Legal framework for local self-government in general incorporates the most important elements in the field of prevention of corruption.

However, it is necessary to take into account the laws that indirectly, in the long run, can affect the reduction of corruption at the local level. One of such regulations, whose adoption is necessary, is a separate law - the Law on Election of Councillors, which would separate the election of MPs and which would enable a more direct connection between the citizens and councillors (semi-proportional system of elections). This may be a way to increase accountability of councillors who can directly contribute to the increase of accountability, transparency and effectiveness of local government bodies, as already mentioned above.

The Law on Local Self-Government envisages formation of the Council for Development and Protection of Local Self-Government. Composition and procedures of the election of members of this body (which is a kind of a collective Ombudsman) have been developed in municipal statutes and special decisions. Practice has shown that this body is mainly composed of representatives of local communities and organizations under control (political and financial control) of local government. This may be an obstacle for efficient functioning of the body and putting greater efforts in combating corruption at local level.

Statutes of municipalities envisage the establishment of municipal public services and institutions whose founder is municipality. Transparency in the work of these organizations is not always at a satisfactory level. Governing organs of public services and institutions are generally composed of people who are members of the ruling political parties. Greater participation of representatives of opposition parties in managerial boards of public institutions/companies/services would contribute to increasing transparency of work and, to a certain extent, share responsibility for the functioning of these organizations.

Recommendations - Legal Framework

⁵⁶ Official Gazette of Montenegro 88/09 from 31 December 2009

⁵⁷ Official Gazette of Montenegro 50/08 from 19.08.2008, 86/09 from 25.12.2009

- 1) Make needs assessment for the adoption of a special Law on Election of Councillors, which would ensure direct accountability of councillors towards citizens, not towards their host political parties.
- 2) Make changes to the Law on Local Self-Government and accordingly to the statutes of municipalities in order to secure greater participation of civil society organizations, which are not predominantly financed from the state budget or the local budget, in the Council for Development and Protection of Local Self-Government.
- 3) Set forth the adoption of changes in the statutes of municipalities that would create the obligation to include representatives of opposition political parties into managerial bodies of public institutions/companies/services, whose founder is municipality, with the aim to improving effectiveness and transparency of work of these organizations.

Institutional Framework

Situation Analysis

With the adoption of the “Strategy for Administrative Reform of Montenegro 2002 – 2009”, the Government of Montenegro began with the implementation of a policy that aimed at democratization, de-politicization, decentralization and expertise of the local self-government system, which would create conditions for faster development of local communities. In line with the Strategy, the Government supported the “Working Programme for Better Local Self-Government in Montenegro,” which was prepared by the Ministry of Justice in cooperation with the Union of Municipalities and with the assistance of the Council of Europe. Ministry of Interior has taken over these activities.

However, in the institutional framework of local self-government, in organizational sense, there is no position, department or division for fight against corruption. Local self-governments are included in the national strategic framework for fight against corruption, and obligation of mayors or presidents of municipalities is to adopt action plans for fight against corruption and to monitor their implementation. Given the sensitivity of this area due to the closeness of relations with citizens, there is the need for a contact point in municipality when it comes to fight against corruption. Person, who would perform operational activities related to collecting information for reporting on the implementation of the Action Plan for fight against corruption at the local level as well as other public policies in this area, may be, in organizational sense, a close associate of the Chief Administrator. This is particularly important, because such activities should be placed under the direct competence of managing functions in the system of the local government.

There is no sufficiently efficient flow of information between the bodies of local self-government, and local government, which do not dispose of specific data from the domain of their work when it comes to sensitive activities, especially in the field of urban planning.

Public services are institutions, business companies and other forms of organizing established by municipality whose task is to provide public services such as: water supply, waste water, waste management, public transport, social protection for elderly and disabled persons, child protection, information, culture and physical culture and sports etc. A part of these affairs may be performed through a private-public partnership.

Recommendations - Institutional Framework

- 1) Within the Chief Administrator's office establish the position for monitoring of the application of anti-corruption measures.
- 2) Improve the system of communication (information flow) between the bodies of local self-government and local government. For this purpose, a quality information system should be implemented in all work processes.
- 3) Adopt and ensure full implementation of the Law on Communal Activities, which prescribes in details the process of privatization of public services.

Strategic Framework

Situation Analysis

Local self-government units adopt their own action plans for fight against corruption in accordance with the national strategic documents. In 2008, the Government of Montenegro adopted the Programme Model to combat corruption in local self-government and Model of action plan. Inter-ministerial Commission for Monitoring the Implementation of the Action plan for fight against corruption at the local level was established in the then Ministry of Interior and Public Administration. The Capital, Royal Capital and other local-self government units adopted programmes and action plans for the fight against corruption in local self-government. A majority of local units adopted, in due time, the said documents and began with the implementation of the activities listed in the said documents. The implementation of measures from action plans for fight against corruption in local self-government is different in different local-self government units, which depends on many factors. One of them lays in the fact that measures in local action plans continue to be of general nature, and are not entirely focused on prevention or elimination of corruption, that is they do not recognize specific anti-corruption benchmarks (indicators) by which success of each of the proposed measures will be measured

There is no integrity plans at the local self-government level. Integrity plans are necessary for the establishment of a comprehensive system of fight against corruption. Although the draft Law on Civil Servants and Employees, which is in the procedure, provides the obligation for all state organs to adopt integrity plans, there is a sufficient legal ground (in anti-corruption principles established by legal framework) for the introduction of elements of integrity in performing public affairs of all state bodies, including local self-government.

Recommendations - Strategic Framework

- 1) Revise local Action Plans for Fight against Corruption following the same procedure under which they were adopted with participation of NGOs and other stakeholders, and make them realistically feasible in a given period of time.
- 2) Adopt measures to enhance integrity in all segments of local self-government, in particular when it comes to the election, nomination and appointment of personnel

Implementation of Legal and Institutional Framework

Situation Analysis

The research of the Directorate for Anti-Corruption Initiative (DACI) in 2009⁵⁸ shows that people positively evaluated efforts in the fight against corruption (52.4% of respondents). According to the same research, greater accuracy is present in services for identification, control and collection of municipal revenues and taxes and, because more than a half of respondents (50.6%) evaluated accuracy of this service with rate six and above six on a scale of 1 to 10. On the other hand, 34.5% of respondents evaluated accuracy of counter services with the same grade. Even despite positive evaluation of efforts in the fight against corruption, a prevailing stand is that the implementation of Action Plan at the local level is partial primarily due to insufficient level of responsibility of managerial staff.

Monitoring of the implementation of Action Plan, which is essentially operationalization of anti-corruption regulations, shows significant progress in implementation of anti-corruption measures and reduction of risk of corruption in local self-governments. However, level of monitoring of that strategic document is insufficient because NGO sector that is active in this field has not been adequately involved in the implementation of measures, and therefore cannot monitor their implementation in a constructive way.

Apart from the need for external monitoring, capacities for internal monitoring of implementation of anti-corruption measures and anti-corruption policies in local self-governments are quite scarce.

Impact of state bodies on implementation of national action plans for fight against corruption is not significant because local self-governments have autonomy in work and decision-making. Public administration can indirectly affect the implementation of policies at local level using legal solutions, such as, for example, Equalization Funds. Thus, local self-governments which do not implement in a quality manner action plans based on the evaluation of the Commission for Monitoring of Implementation of Local Action Plans cannot be funded in a budget year for capital investments.

Recommendations – Implementation of Legal and Institutional Framework

- 1) Strengthen responsibility of managers of municipal secretariats and public services for the implementation of anti-corruption legal and strategic framework.
- 2) Identify persons responsible for the implementation of action plans (e.g. associates of the Chief Administrator).
- 3) Condition distribution of funds from equalization fund by the implementation of action plans for fight against corruption.
- 4) Strengthen professional capacities of the Commission for Monitoring of Implementation of Local Action Plans established by the Ministry of Interior, as a competent authority for local self-government.
- 5) Establish with the (organic) Law on Budget a link between the implementation of action plans in municipalities which do not use the Equalization Fund with capital investments (capital budget).

Human Resource Policy

Situation Analysis

HR policy at the level of the ministry responsible for local self-government is conducted in accordance with the Law on Civil Servants and Employees, which regulates employment of civil servants or employees at

⁵⁸ Integrity and Capacity Assessment of Local Self Government Capacity in Montenegro, May 2009.

the level of local self-governments. Employees of the local self-government bodies are according to the Law on Local Self-Government, local civil servants and employees who perform professional duties within the competence of local self-government.

In local self-governments there is no adequate system of human resources management which leads to reduced efficiency at work. In 2009 the Government adopted the National Training Strategy for Local Self-Governments which envisages introduction of separate organizational units for human resources management. Implementation of this document will contribute to the increase in effectiveness of work of local self-governments but also the increase in transparency, responsibility of local self-governments and greater influence of external entities in the control of work of local government bodies.

There is a lack of personnel, especially in important positions, in most municipalities in the north of Montenegro, which is reflected on the ability of local self-governments to perform effectively affairs falling under its jurisdiction. Investing in people is not on the level it should be and the reason for that is a lack of funds in local self-governments. Equipping of working positions is also unsatisfactory. There is the lack of personnel in urbanism, inspection and technical services. Personnel are inadequately trained for the fight against corruption, particularly when it comes to conflict of interest, which also presents the highest risk.

Recommendations – Human Resource Policy

- 1) Set clear and transparent criteria for the employment in managerial positions in local self-governments (secretariat managers, service managers, etc.), which are not under the Law on Civil Servants and Employees;
- 2) Encourage implementation of the National Training Strategy for Local Self-Government and introduction of a new system of human resource management;
- 3) Train employees in local self-government bodies to combat corruption, particularly in terms of conflicts of interest.

Relation towards the results of the existing researches in the Special Risk Areas

Situation Analysis

We analyzed about 25 different researches and reports, which more or less tackle the area of local self-government. The following documents singled out as most relevant:

SIGMA – Montenegro Assessment 2010, identifies areas in administration which are affected the most by corruption, such as tax administration, licensing, spatial planning and local self-government in the coastal area, public procurement and customs services. It is also stated that transparency in local self-governments is insufficient. A significant step was made by preparing local action plans. *Analytical Report of the European Commission for 2010*, points to the lack of administrative capacity in local self-governments, as well as the lack of transparency in their work. *Montenegro 2009 Progress Report of the European Commission* states that the capacity of municipalities is low in terms of public procurement, computerization, which increases risk of corruption. This document does not present other important issues which would give an overview of risk of corruption in local self-governments. *Integrity and Capacity Assessment of Local Self-Government Sector in Montenegro (DACI, 2009)* gives a very high quality

research of local self-governments. It included functioning of local self-governments, institutional framework, organizational structure and funding of local self-governments, and corruption in local self-government bodies. *Strengthening accountability and transparency – general module, MATR, Dutch Ministry of Foreign Affairs*⁵⁹ considers general legal and institutional framework for fight against corruption, it points to the factors causing corruption, among which it singles out: inefficiency of the system, low culture of respect and trust. In this sense, it is necessary to develop new values, and that is the responsibility of the leaders of local self-governments.

Recommendation - Relation towards the results of the existing researches in the Special Risk Areas

- Organizational culture in municipalities should contain elements of the fight against corruption in all segments, as a mechanism for monitoring of effectiveness of adopted measures based on conducted research.

V. RISK OCCURRENCE ASSESSMENT

Based on the previously stated estimates for the emergence of preconditions for the risk of corruption, this part tackles the assessment of risk phenomena that may result from these preconditions, or could be seen from the analysis of previous researches and on the basis of direct interviews in certain institutions in accordance with prepared questionnaire. Risk phenomena for each area may be of higher, medium or low intensity, and are presented in that order. This part, finally, sets out a series of recommendations relating to elimination or mitigation of these risk phenomena.

Privatization

High intensity risks:

- There are no transparent records about the privatization cases which reported violations of procedures and laws.
- Reports of control and audit institutions in this area are not sufficiently transparent, so that reports on violation of procedures or any other form of wrongdoing would be taken into account so that irregularities and deficiencies could be eliminated⁶⁰.
- Decisions on privatization are not based on adequate planning process and feasibility studies which include all macroeconomic, sectoral and regional aspects of privatization, including risk mapping if in some cases corruption risk area is identified.
- Full transparency of the decision on privatization of individual enterprises is not provided (the arguments for and against planned privatization, desired goals, cost-benefit analysis, or the analysis of the planned privatization procedure and all relevant documents which can be available to the public⁶¹), because there are complaints about the incompleteness of published documentation.

⁵⁹ <http://uom.co.me/wp-content/uploads/2010/jacanje-odgovornosti-transparentnosti-opsti-model.pdf>

⁶⁰ According to the opinion of competent institutions, transparency is provided by placing the a/m reports on the web site of the Privatization Council

⁶¹ According to the opinion of authorized institutions, plan of privatization is published in the Official Gazette and on the web site of the Privatization Council and the decision on privatization can be obtained through the free access to information.

Mid-intensity risks:

- There is no effective system of monitoring of work of the Council for Privatization and Capital Projects, in particular when it comes to the issues of running privatization policy as well as privatization of certain enterprises.
- Competence of institutions for monitoring and control is not quite clear when it comes to control of all decisions related to privatization regardless of whether they are made at the Council for Privatization or elsewhere.
- The civil sector is not fully enabled to monitor and have access to all relevant documents, including the information for which there is no clear legal ground to be qualified as confidential.⁶²

Low-intensity risks:

- There is no proactive practice of communication with the public before making privatization plans.
- During the privatization of large enterprises, public awareness campaigns do not include debate about all parameters related to that specific case of privatization.

Final recommendations – PRIVATIZATION

- 1) Increase the control of the Council for Privatization and Capital Project, including the development and adoption of privatization plans, and privatization procedure of individual enterprises.
- 2) Oblige the Council for Privatization and Capital Projects to take measures based on the findings of internal and external audit.
- 3) Institutions for the monitoring and control of the privatization process, within its competence, must control all decisions related to privatization process whether they are made by the Council for Privatization and Capital Projects or other institutions.
- 4) Prescribe the obligation for the Council for Privatization and Capital Projects to take into consideration the reports on violation of procedures or any other form of wrongdoing that are submitted to the Council or parliamentary Commission for Monitoring and Control of the Privatization Process, which would result in elimination of deficiencies and correction of irregularities.
- 5) Develop a database on complaints on irregularities in the privatization process, which would include complaints submitted to the misdemeanour or criminal prosecution bodies or NGOs.
- 6) Oblige the Tripartite Commission to incorporate the records of prosecuted cases in the area of privatization when drafting its reports.
- 7) Publish, via media, the arguments for and against planned privatization of individual enterprises (from Privatization plans), specify desired objectives, cost and benefit analysis, planned privatization process as well as all relevant documents that may be available to the public.
- 8) Establish in the Council for Privatization and Capital Projects a proactive practice of publishing privatization documents and information campaigns in the media.
- 9) Ensure that all Decisions on privatization are based in line with the Feasibility study, taking into account on the effects of privatization on macroeconomic and regional development, including risk assessment if in some cases a corruption risk area is identified.

Public Procurement

Planning, preparation and selection of public procurement procedure

Phases of planning, preparation and selection of public procurement procedure contain risks in terms of:

⁶² According to the opinion of competent institutions the Law on Free Access to Information resolves this issue.

High-intensity risks:

- Overestimated necessary quantities or volume of procurement;
- Failure to comply with terms and conditions of implementation of public procurement procedure in accordance with the estimated value and share of procurement with the intention to avoid application of prescribed process of procurement;
- Tender documentation prescribed in a discriminatory manner and adjusted to a particular bidder;

Mid-intensity risks:

- Selection of a negotiated procedure without a prior consent of the Public Procurement Directorate about fulfilment of necessary requirements;
- Use of specific signs for a type or kind of goods which place individual bidders, that is, producers into a better position.

Low-intensity risks:

- Investment that lacks social-economical viability.

The phase of implementation of public procurement procedure contains the following:

High-intensity risks:

- Conclusion of cartel contracts in order to influence the outcome of bidding. These are usually three types of agreements: agreement on price, delivery agreement and agreement about the bidder with the best bid.
- Frequent overruns and subsequent approvals of exceeding the appraised value (up to the limits provided by the law)

Risk occurrences in the phase of contract implementation:

High-intensity risks:

- Failure to observe provisions of the contract, particularly in terms of price and deadlines;
- Amending key terms of the contract, which are inconsistent with public procurement procedure conducted.

Mid-intensity risks:

- Conclusion of a public procurement contract, then annulment of a part of the contract and conclusion of the contract without publicizing the annulled part with bidders, with the explanation that value of such contracts does not exceed the estimated value for which the application of public procurement rules is prescribed.

Final recommendations – PUBLIC PROCUREMENT

- 1) Public Procurement Directorate should publish a profile of purchaser and bidder with identified risks;
- 2) Eliminate opportunities for discrimination and favouring of certain bidders, through efficient processing of complaints submitted to the Commission for Control of Public Procurement, on this ground.
- 3) Within the Public Procurement Directorate to establish the practice of regular internal reports on all phases of preparation and implementation of public procurement.

- 4) Clearly abide by the separation of competences and responsibilities in the implementation phase of public procurement procedure.
- 5) Ensure that all stakeholders in public procurement procedure are fully informed, in a provable manner, about any potential contact of a purchaser with bidder;
- 6) Intensify the procedure of external and internal auditing, especially as of the moment of the conclusion of a public procurement contract.
- 7) Oblige the Public Procurement Directorate to conduct external and internal audit during the implementation of public procurement contract.
- 8) Publish public procurement contracts with selected bidders.
- 9) When it comes to public procurement contracts (exceeding EUR 500 000), even the current states of the implementation thereof should be published.

Urban Planning

Historical legacy/Lack of Plans

In the world today urbanism emerges as an area in which corruption is present even despite the existence of quality legal regulations. In Montenegro, the legal framework has recently been improved significantly, thus the existing Law on Spatial Planning and Construction contains a considerable number of anti-corruption provisions. However, the problem is a low level of administrative capacity for law enforcement and, accordingly, insufficient efficiency of administration, which favours the development of corruption-related phenomena (confirmed in interviews in municipalities). These are also the reasons for insufficient and poor-quality adoption of general and detailed urban plans (hereinafter referred to as the GUP and DUP).

Although in recent years the situation has significantly improved and it has been worked more intensively on the development of new plans, the risk of corruption is still present due to the lack of plans and lack of pressure of initiatives for drafting of new plans (or modification of the existing ones), where some plans may be faster developed than others due to the discretionary decision-making power, and because of non-existence of long-term visions of space.

Missing plans are often developed at an accelerated pace because of the need of investment and in order to attract investors as soon as possible, as well as because of the fear that once initiated the implementation of projects may be questioned. It is obvious that too short deadlines for the development of plans affect the quality of plans and increase possibilities for corrupt activities.

Changes in plans of lower order often require changes in plans of higher order and if there is no long-term planning policy or if there is a deviation from that policy, risk of corruption is present. If there is no long-term planning policy, clearly set with a long-term vision of space, it is made possible for the investors to impose their interests, both during the construction of new facilities and while legalizing the existing ones. Also, discretionary powers at the local self-governments level can also be brought up, especially when the same people are involved in the assessment of plans, are engaged in commissions and committees appointed by mayor. It should be mentioned that this is particularly present in cases when DUPs and GUPs change at the same time.

Development of Planning Documentation

Although the Law on Spatial Planning and Construction regulates the process of making plans in details by taking into account corruption risk in this area, based on available analysis and information, those risks in the process of development and adoption of plans still exist.

Development of planning documents is normally awarded to planning companies based on public invitation. In the tender procedure the following risk situations are possible and are often identified:

High-intensity risks:

- In agreement with an officer (or several officers) responsible to conduct tender, a company can submit a bid with lower price, and after getting a job it can require price increase due to certain "legitimate" reasons.
- Interested companies can send their bid to the tender for the development of plans for areas attractive to investors or where there is illegal construction, with a price under economic price, because they believe they would gain profit from corruption during the plan development. This is especially dangerous if the price has a significant role as a criterion for selecting the best bidder.
- Direct collusion of bidders and investors interested in space for which plans are made is possible, and tender participant directly bids with the best price or he/she will bribe other bidders to withdraw their bids, thanks to gains from corruption.

Mid-intensity risks:

- Companies engaged in the development of planning documentation can be exposed to pressure from investors interested in building in the area for which the plan is made as well as the investors who have illegally built buildings and want to legalize them through the planning process. This pressure can be realized through collusion with political impacts and it is possible to result in actions, which contain elements of corruption.
- The risk related to building of large office buildings or apartments for market in attractive locations which bring big profits to investors.

Public discussion

Mid-intensity risks:

- Non-transparency of the process of development and adoption of plans is one of major sources of corruption in this area. The Law on Spatial Planning and Construction guarantees transparency of the planning process and defines the obligation of the state and local institutions to involve citizens in decision-making. It is also regulated by the Law on Local Self-Government, which guarantees participation of citizens in the work of local self-government and transparency in work. However, there is a big difference between formal and essential transparency. If only formal requirements are met in the process, then the possibility of corrupt actions is higher. On the contrary, if the process is essentially transparent, then the possibility of corruption risk is reduced.
- Also, if the plans are adopted as "urgent", then transparency is diminished and corrupt practices are easier to conceal.

Final recommendations – URBAN PLANNING

1) Improve efficiency and quality of work of institutions which provide inputs for plans, particularly of the Real Estate Directorate to a higher level.
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- 2) Introduce control and possible sanctions for non-enforcement of legal obligations to publish all licenses online, cases of license issuance contrary to the current planning documentation and cases of obstructing free access to information on plans and process of issuing building and operational use permits.
- 3) Establish a system of continuous reporting on the implementation of anti-corruption provisions by the internal control of the Ministry of Sustainable Development and Tourism, as well as in secretariats for urban planning and communal services in municipalities.
- 4) Implement information system in the Department of Urbanism in the Ministry of Sustainable Development and Tourism and technically reinforce inspection services in this respect.
- 5) Introduce elements of integrity for all positions in institutions responsible for planning, and publicly report on the implementation of integrity measures.

Education

High-intensity risks:

– ***The manner of election of principals in education institutions***

With the new amendments to the General Law on Education, the manner of selection of the principle has been changed. In effect, the School Board calls for a public competition. In that process legal requirements are strictly taken into account (level and type of education, 5 years of experience in education, professional examination in education passed, if the candidate has Montenegrin citizenship) which also includes the submission of the development program for the institution. Minister of Education elects a school principal from the list of candidates who meet legal requirements. In the case of equality of two or more candidates, the Minister chooses one candidate by using informal means of decision making, that is, there is no regulation which defines this situation precisely.

– ***Engaging academic and teaching staff***

The Statute of the University of Montenegro provides for the possibility of engaging teaching assistants. This applies to students of master's or doctoral studies, teaching assistants or university teachers. These individuals are selected on the basis of a public competition announced by the Dean who, at the same time decides on the selection of teaching assistants, based on the proposal of subject teacher and with the opinion of the Science-Educational Council of the faculty. Only assistants who obtained positive opinion from the subject teacher can extend their engagement in the following year. Teaching assistants sign employment contract for a definite time period for not longer than a year. This area has two risk points: 1) excessive involvement of the subject teacher in the process of engagement of teaching assistant (proposal is needed for his/her engagement and for the extension of contract positive opinion of subject teacher is needed), 2) duration of engagement of a teaching assistant (for master's studies students for not more than four years, and for PhD students for up to six years). The first point is risky because engagement depends on subject teacher and his/her consent, and this leaves room for various abuses. The second point is risky because the possibility of engagement of assistants is unduly extended. Engagement should be limited to the duration of the master's or doctoral studies.

– ***Sitting for exams***

This area is defined by the Rules on studying undergraduate, graduate and doctoral studies. The Code of Academic Ethics⁶³ also deals with this in a way that it lists criteria for evaluations of: knowledge, understanding and effort. Academic staff cannot condition students to purchase literature. Also, academic

⁶³ Code of Academic Ethics, University of Montenegro, Senate Decision no.1117 form 11 May 2004;

staff is required to pay attention to conflicts of interest and incompatibility of public office, and protectionism, lobbying, blackmailing and pressure, bribery and corruption and other forms of dishonest influence on the violation of professional standards and criteria in carrying out academic activities are the most severe violations of academic rules of conduct⁶⁴. Even despite well-developed regulations, there is a variety of malpractices occurring during the sitting for exams, from bribery through the use of kinship and friendship ties, protectionism to conditioning purchase of literature which would enable the student to pass exam.

Mid-intensity risks:

– ***The role of management at enrolment of students***

The Law on Vocational Education regulates enrolment of students. In a situation when greater number of candidates than prescribed by the competition apply for entry into professional three-year or four-year schools, the order of enrolment is determined based on general performance of students in the last three years of primary school, results from external evaluation of knowledge in primary school and special skills or talents important for acquiring education. The commission, established by the School Board, decides about the enrolment but school principal also has certain, formal and informal, influence. Risk occurrence lies in the fact that entry points system is not transparent enough, and there is no centralized database for enrolment of students in schools. When enrolling universities and faculties the Senate can extend the number of students who enrol if the increased number does not disturb teaching process.

– ***Records on additional work of teachers (giving private lessons, referring students to private lessons)***

According to legal solutions, teachers are allowed to do additional activities, thus a teacher can, for a fee, coach students in various subjects provided that the student does not attend the same school where the teacher is employed or that the student does not sit for exams in that same school. If a teacher violates this provision, and educational inspection finds it, the teacher is sanctioned with termination of his/her employment. However, there is no information about how the Education Inspectorate exercise controls or about the number of sanctions applied. These data would present important indicators for assessing the risk of corruption.

– ***Part-time students (sitting exams)***

Part-time students bear costs of sitting for exams. The schools have regulated this area in the way that income generated in this manner is shared between the school, which organized exam, and a teacher who participated in the exam. In certain number of schools, where there is a high percentage of part-time students as compared to the total number of students who complete school under regular enrolment (up to 70%). Risk occurrence is reflected in disputable rules and lack of transparency of sitting for exams.

Low-intensity risks:

– ***Procedure for leasing school premises (classrooms, sports halls)***

The Regulation of the Government on the lease of office premises which are the state property regulates this area. The procedure is as follows: the School Board, that is, the Managing Board makes a decision and in a form of initiative proposes the initial price, which needs to be approved by the Ministry. The procedure must observe strict criteria, i.e. publishing must be public in order to ensure the selection of the best bidder. In addition, it is obligatory to send reports with complete documentation to the competent ministry (when the advertisement was published, how many bidders applied, if there were any complaints), together with the contract concluded between school and bidder. Ministry is making further efforts to regulate this area

⁶⁴ Code of Academic Ethics, University of Montenegro, preamble.

and is following advertisements published in daily newspapers. The legislation is satisfactory, and there is a will to put an end to abuses. However, risks of corruption still exist because it is difficult to control the use of a large number of school premises.

– **Accreditation**

The Council for Higher Education is in charge of accreditation and re-accreditation. Council members are appointed by the Government. There are regulations governing accreditation procedure. The law stipulates that the work of the Council is public, that its conclusions and opinions are also public, that is available to the public. However, there is no data about how these provisions of the Law apply in practice, i.e. whether the criteria for accreditation are clear, whether the procedure itself and its result are transparent, whether in the selection of members conflicts of interest are taken into account as well as integrity and the like. Nevertheless, even without these data, it can be stated that this is a risk phenomena. In fact, there are institutions that operate without license, some members of the Council work at the state faculty and the Council decides on accreditation of private faculties. In addition, the Council does not have its web page and thus insight of the public in its activities is minimized.

Final recommendations – EDUCATION

- 1) Establish a centralized database of all candidates for admission in education institutions, which will contain the data that are essential for scoring and make the process of scoring and ranking of candidates transparent.
- 2) Establish clear and objective criteria when deciding in the Senate about expanding the number of students for admission to higher education institutions.
- 3) Prescribe clear requirements for leasing school premises and introduce a mechanism for monitoring of irregularities.
- 4) Introduce a register for additional work of teachers (with data about the teacher and students) and provide a quality mechanism for application and reporting on violations of rules on additional work.
- 5) Set quotas and control excessive admission of part-time pupils.
- 6) In case of equality of two or more candidates for directors of educational institutions, set clear criteria based on which the Minister shall decide which candidate to choose.
- 7) Adopt the Rulebook on clear and objective criteria for engagement of teaching associates and ensure transparency of the procedure of admission of teaching associates (for example, introduction of a database of applicants that will be available on the website of the institution).
- 8) In rulebooks, prescribe clear procedure for managing and writing minutes of sitting for exam.
- 9) In rulebooks, prescribe that exam must always be attended by at least two teachers, and that written exams must be coded.

Health Care

High-intensity risks:

– **Procurement of medicines and medical equipment**

Procurement of medicines and medical equipment is exceptionally big item in expenditure of the health care system. All medicines and equipment are procured through a Public Pharmacy MONTEFARM. In the 2009 Report on Operations of the Health Insurance Fund, expenditures for this item amounted to EUR 46,806,521.11. Specificity of the goods procured as well as an insufficiently transparent procedure represent risk occurrence. In terms of specificity of commodities, risk occurrence is specifying too much or too little specificities in tender items. In the first case, bidder may thus be chosen by specifying details such

as producer, name of the drug and the like. In the second case conditions for the tender become unclear and then the Commission has a greater opportunity for abuse

– **Additional work**

Health workers are granted the right to additional work under certain conditions, including: to be employed full time; to have the approval of director of principal institution; to perform additional work in institution that belongs to the network of health facilities. The Rulebook on detailed conditions for carrying out additional work of health workers has been adopted, however, there are no unique records of additional work (which might be kept, for example, by Chamber of Physicians). The absence of such evidence leaves room for referring their patients to private clinics (mostly for health care services that are covered by patient's insurance), as well as "sharing" patients (for the referral of their patients to a private clinic where his/her friends work and vice versa). Additional work is vulnerable to conflicts of interest, given that one person works in both public and private sector

– **Waiting list**

In health care system, at the secondary and tertiary levels of health care, we have a large number of medical procedures, specialists' examinations, diagnosis, and the like. There is a large number of patients using these procedures and medical examinations and x-raying are scheduled in advance. Until recently, waiting lists were not transparent at all, that is, it was not possible to have insight in them, and the lists were often made based on kinship and other connections but also by giving gifts or money. Although, present situation is somewhat improved (Clinical Hospital Centre has made lists transparent by publishing them on its website), there is still a risk of irregularities, because there is no control mechanism in terms of questioning justification of emergency reasons. Finally, there is no information about who of the employees can have access to specific lists.

Mid-intensity risks:

– **Relationship of pharmaceutical companies and doctors**

Relationship between pharmaceutical companies and doctors is always in the focus due to the nature of that relationship. Namely, on one side, it depends directly on the doctor who gives a prescription, which medicine will be prescribed to a patient, and on the other side, pharmaceutical companies earn a lot of money from sale of medicines. Also, pharmaceutical companies often finance trainings of doctors and other health professionals, and it happens that they also pay donations. Therefore, this relationship has several critical elements, first and foremost, direct, personal contact between the doctor and pharmaceutical company, that is, their representatives, and also big money is involved and both sides can earn.

The Law on Medicines prohibits offering financial or any other benefits to the persons authorized to give prescriptions or to their family members. An exception is envisaged that pharmaceutical companies may sponsor conferences (by covering travel expenses, accommodation and the like). In order to further avoid the existing risks, this relationship needs to be more transparent and strict conditions for mutual communication between these two entities should be prescribed.

Low-intensity risks:

– **Sick leave**

Competence of the Health Insurance Fund is to establish rights of the insured, that is, employee to temporary inability to work and to compensation. A medical commission, founded by the Fund, is competent for more than a 30-day sick leave, and reimbursement for absence up to 60 days is paid by the employer, and for temporary inability to work of more than 60 days reimbursement is paid by the Fund,

which means that covered costs are huge. It is interesting to mention that the Fund's 2009 Sick Leave Report states that almost all medical commissions per local units of the Fund did not observe procedure prescribed by the Rulebook on the manner and procedure of exercising right to temporary inability to work and compensation during the time period of the inability to work, i.e. that medical commissions approve temporary inability to work, and they do not enter into a patient's report the data necessary for monitoring and documenting justifiability for the approved sick leave from the discharge list, the specialist's report. All of these do not necessarily have to imply corrupt practices, but it is necessary to examine the reasons why the commissions do not observe the procedure, and to increase responsibility and transparency of their work.

Final recommendations – HEALTH CARE

- 1) Make waiting lists transparent with daily updates (patients on waiting list should be coded).
- 2) Introduce the monitoring of decisions on establishing priorities on waiting lists.
- 3) Provide for outsourcing – engagement of medical experts in tenders in the Commission for the Control of Public Procurement when deciding on appeals related to medicine procurement and consumables (Montefarm's comment)
- 4) Establish a central register of additional work at the level of the network of health institutions.
- 5) Clearly define the relationship between health workers and pharmaceutical companies.
- 6) Ensure transparency and monitoring of the system of granting sick.

Local Self-Government

High-intensity risks:

– ***Issuing building permits***

Main causes of risks of corruption in the field of construction of buildings, or issuing building permits are numerous procedures and long duration thereof. For example, the procedure for issuing building permit contains in the corrected version 21 steps.

This wide range of administrative procedures indicates that in this sphere there are wide opportunities for corruption. Although we have no data that would illustrate or even just prove the existence of corruption, it is the fact that such complexity of procedures creates opportunities for corrupt actions. In effect, the point is that such a large range of steps means that dynamics of permit issuing can be "bought" from the civil servant responsible for certain permits, so called "corruption without theft". In other words, there is no unlawful acquisition of right, as for example in construction without proper permits, but faster gaining of something one is generally entitled to is paid for.

Reasons for such long delays certainly lie in the lack of administrative capacity of public administration and in inadequate delegation of competences in issuing individual decisions and permits.

Also in this situation room opens to "major players" in the market, who thanks to their economic and political power can much faster obtain permits than "small players". Moreover, in the whole process they are less exposed to "racketeering" by authorized civil servants. In this case, a form of corruption which is known as "corruption with theft" is more pronounced. For example, when works begin before appropriate permits are obtained. Permits are given only later through the creation or modification of plans. Cases of "rent seeking", as a special form of corruption, which are characterized by purchase of regulations, are not excluded.

Low level of capacity of public administration is what explains the lack of general and detailed urban plans. The existence of these plans is however a prerequisite for construction of buildings and urbanization.

– ***Nepotism and presence of “connections”***

Population of Montenegro is small and strong family ties exist. According to DACI research⁶⁵, nepotism exists to a certain extent. Namely, every fifth respondent managed with the help of relatives, friends from the local self-government to “make a deal” through that connection.

One of the main risks at the local level includes conflicts of interest which are based on personal relationships, favouritism and nepotism. These conflicts of interest are present in obtaining building permits, decisions on procurement and so on.

Mid-intensity risks:

– ***Lack of information among the citizens and lack of updated records***

Lack of information among the citizens is often the cause of corrupt behaviour. The records of permits, illegally built facilities, objects and their status are incomplete. For example, when there are no records or chance to obtain information promptly, we have delays, so that citizens lose will and interest to obtain certain document through a regular procedure.

Low-intensity risks:

– ***Distrust of citizens***

There has been some distrust of citizens in local self-governments even though it might often be for no reason. Perhaps the reason for that may be the fact that documentation is collected at numerous services which often do not have good mutual communication which makes it difficult to obtain documents and how fast the applicants’ requests are going to be processed often depends on the good will of civil servants.

Final recommendations – LOCAL SELF-GOVERNMENT

- 1) As soon as possible adopt amendments to the Law on Spatial Planning and Construction, which would simplify procedures for issuing building permits and adopt a mechanism for monitoring of effects of this legal solution.
- 2) Introduce specific and quantifiable measures to combat nepotism and conflicts of interest in local self-government, with clear objectives, activities and measures of success. One of these measures is incompatibility of executive positions at the local level with legislative function at the state level.
- 3) Arrange records of permits, illegal construction and the status of cases under consideration;
- 4) Increase efficiency and effectiveness of local government through the introduction of quality management and stricter internal control.

⁶⁵ Capacity and Integrity Research of Public Administration in Montenegro (DACI, 2010.)

Conclusion

Based on the previous two parts of this document - evaluation of preconditions for occurrence of risk of corruption in key areas of risk occurrence assessment, at least three factors can be identified that are common to all areas and which create conditions for potential risk occurrence that can lead to corrupt behaviour:

1. Discretionary powers of decision-makers which are often not limited or are vaguely regulated and thus leave room for risk-bearing behaviour
2. Accountability for risk-bearing behaviour is very low
3. Political impact on the selection of key managerial positions is always present.

Although these factors may have some connection with corruption under certain circumstances, they do not always have anticipated effects in all anticipated situations. To think that there is a close causal connection between any of the above mentioned factors and conducting corruption would be wrong and it would mean not knowing that causal factors lie in explicit intentions of individual employees and that they are in all, but also most often in extreme situations, a matter of choice and individual decision.

In other words, if one state agency has monopoly in the provision of some services to citizens (for example, issuing building permits) and has wide discretionary rights when it comes to decision making, it is reasonable to assume that there is room for risk of corruption. However, whether that authority knowingly engages in corrupt activities will depend on a range of other factors, including whether the purpose for issuing such licenses is clearly set by law, it will depend on personal integrity, as well as on less quantifiable but equally important factor such as institutional culture.

Accordingly and in line with most of recommendations presented in this study, one of priorities of all state administration bodies and sectors of health care and education, integrity plans should be adopted as soon as possible, as well as mechanisms for their implementation and monitoring of results achieved through applying that anti-corruption mechanism.

Finally, it should be noted here that a new set of new legislation, amendments to which are underway, i.e., in the procedure during the preparation of this study, significantly improves i.e. reduces the above mentioned risks. What remains to be done is to introduce precise mechanisms of implementation and monitoring of the results of introduction of these new regulations in order to ensure measuring of the impact of those regulations in preventing or reducing the risk of corruption.

FRAMEWORK FOR EVALUATION OF THE STRATEGY FOR FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME IN MONTENEGRO

Introduction

The second year of the second strategic cycle for fight against corruption and organized crime, covering the period from 2010 to 2014 is underway in Montenegro. According to the experience so far, after the first strategic cycle was completed (Programme of Fight against Corruption and Organized Crime 2005-2009) there was no evaluation based on a clearly defined framework and objective indicators, which would be used every time when evaluation of Strategy impact on the overall progress in fight against corruption is evaluated. In fact, the current Strategy relied on particular indicators stemming either from measures of the previous action plan that were not implemented (2008-2010), certain number of reports of domestic and international institutions which performed unsystematic *i.e.* ad hoc investigations and research in particular areas (private sector, local self-government, health care system etc.), or from the self-evaluation process of institutions which did not objectively demonstrate measurable progress in fight against corruption that can be measured by clear indicators.

For this purpose it is important to point out the need for establishment of such an evaluation framework that will connect activities performed, in terms of risk assessment, of public opinion investigation (campaigns) and *ad hoc* investigations, as well as all other related public policies with strategic objectives. It is very important for the set objectives to be evaluated at the end of every strategic cycle in such a manner which will clearly show to what extent they have been fulfilled or not, and whether the measures, success indicators and other strategic elements (risk assessments etc.) have contributed to the achievement of that objective, *i.e.* concrete results in fight against corruption.

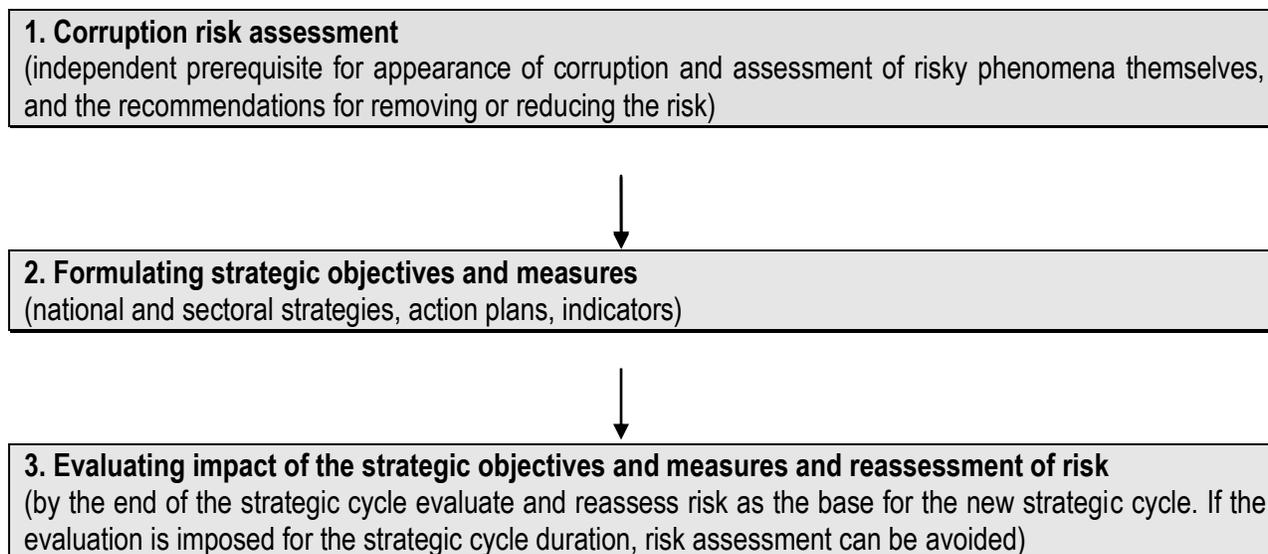
Evaluation of the effects of the Strategy for Fight against Corruption and Organized Crime without the final assessment of concrete achievements and results is only one more of those „additional activities“, which institutions usually do not show much interest for. Accordingly, it is necessary to adopt an evaluation framework to be filled systematically by institutions competent for monitoring implementation of the Strategy and the Action Plan for fight against corruption and organized crime every time when assessment of the Strategy impact at the end of a cycle is assessed.

Last but not least, the time factor should be mentioned. Considering that one strategic cycle includes, as a rule, two action plans (currently 2010-2012), and that for the duration of an action plan its review is very frequently done, as is the case at the moment, it is necessary to set the evaluation time framework for the Strategy which will enable possible modelling of strategic objectives in relation to the needs of time, and

primarily the European Union integration process, which requires permanent taking over of new obligations and activities.

Evaluation phase and methodology

As a rule, evolution of the Strategy impact is done at the end of the strategic cycle, i.e. halfway through it, if this is necessary for rewording of objectives or measures. The graph below shows the „strategic cycle “, including three phases:



Only reviews of action plans as a kind of correction/evaluation during the time period covered by the plan have been done in Montenegro so far, mainly based on the needs imposed by the European integration process, but mainly based on supplementing of the existing measures or indicators. However, it is necessary to conduct an analysis in order to assess whether the set strategic objectives really contributed to progress in fight against corruption. Such an analysis would have to rely as a minimum on the following objective criteria:

- Relevance of objectives
- Efficiency
- Efficacy
- Sustainability
- Other development and institutional impacts

Each of these criteria corresponds to a certain number of questions asked during evaluation. Also, there are specific joint questions pervading several evaluation parameters, such as the impact of the private and non-governmental sector on the achievement of objectives etc. They are explained in Table 1 pertaining to the methodological approach to evaluation, while Table 2 gives an overview of the time frame in which the evaluation is to be conducted.

When methodology of evaluation itself is concerned, for the purpose of illustration the model of assessment of regulations introduction can be used, which is used in the in the „screening“ phase in the European integration process. In short, the model consists of the following questions:

1. What is the impact of regulations introduction (positive, negative, no impact)?
2. If the impact is positive, in what manner was it felt and is it short-term, long-term or negligible?
3. If the impact is negative, what target group (besides citizens themselves) was most affected and how?
4. Was introduction of regulations preceded by previous analysis of financial feasibility?
5. How did the following factors affect the impact of introduction of particular regulations:
 - a) personnel and material capacities
 - b) readiness and efficiency of the state in ensuring the needed funds
 - c) need for establishment of new institutions (multiplying institutions)
 - d) need for reorganization of internal structure for particular institutions
 - e) adherence to the legal time limits for particular actions
 - f) lack of knowledge and experience for regulations implementation
 - g) need for additional staff training, and
 - h) what is the public perception of the impact of the quoted measure (investigations, research, interviews but also reports of international organizations, TI perception index, etc).

Consequently, for each separate objective within the strategy it is possible to ask some of the above questions during overall impact evaluation, as envisaged by the model for regulations. In summary, the strategy evaluation methodology can be approached through the following set of investigations:

- (i) Evaluation at the level of state policies (coordination, communication)
- (ii) Evaluation of technical conditions (personnel, material)
- (iii) Financial evaluation
- (iv) Socio-economic evaluation, i.e. Response to the question whether the measures adopted for the purpose of fulfilment of strategic objectives have been recognized in the society as a manner of fight against corruption

It is precisely this last parameter, if the questions are answered properly, that is the key for successful strategy evaluation. It will assist in the future to harmonize the reforms, which are in principle designed and implemented by the Government, with the manner and need for their monitoring by the non-governmental sector, and to create space and open possibilities for civil society organizations in general to influence the formulating and implementation of the strategy for fight against corruption and organized crime. Therefore it is necessary to adopt an evaluation framework as a public policy instrument and perform an analysis of strategy implementation both by the competent institutions of the authorities, and by the external (independent) sources.

Strategy evaluation is a mechanism implying full engagement of institutions and a systematic approach, having in mind the fact that possible failure to fulfil particular objectives should be presented to the public. Having in mind that work on evaluation is only beginning in Montenegro, and that restructuring of the institutional framework for fight against corruption has been envisaged in the foreseeable future, as well as

the fact that first corruption risk assessment has just been conducted in particularly sensitive areas, the following 3 things are imposed as the most urgent for the first evaluation cycle:

- evaluation of capacities for Strategy implementation (institutional issue)
- giving priorities within the Action plan (2012-2014), based on the conducted risk assessment
- connecting Strategy implementation with the work plans and budget policy within all the institutions the Strategy pertains to.

Since the current Strategy in itself does not envisage a precise evaluation system for its impact on fight against corruption, it is recommended that (alternatively) the following Action Plan (2012-2014) be elaborated with the aim of establishing expected outcomes for each of the objectives with precise indicators (at the level of objectives, and not only at the level of measures from the Action Plan), or to determine those outcomes by a special decision of the National Commission.

In order for the Strategy evaluation process to be conducted successfully, it is very important for the institution conducting evaluation to be aware of the following steps important for managing this process:

- Determine the subject of evaluation (set questions and indicators, Table 1)
- Develop adequate written materials and forms (development of tables)
- Distribution of materials and forms
- Training of staff that will be in charge of evaluation in institutions implementing particular activities within Strategy implementation (eg. Training for the staff of the Administration for Anti-Corruption Initiative or future institutional framework)
- Reviewing of evaluation forms on semi-annual and annual basis (Table 2)
- Data collection
- Relation with the institutions that did not submit data in a timely manner
- Data entry within available data bases (software solutions)
- Checking data quality
- Data analysis (take as an example the analytical part of the report of the National Commission for monitoring Action Plan implementation)
- Periodic evaluation (Table 2)
- Informing decision makers and the public

As it has already been stated, Tables 1 and 2 would represent the starting base for the evaluation framework, which is to be established either within the action plan mechanisms, or by a special decision of the National Commission.

TABLE 1: APPROACH TO EVALUATION

Evaluation criteria	Questions	Indicators	Sources of information	Methods of data collection and analysis
A. Relevance of objectives set in the Strategy for fight against corruption and organized crime in relation to the austereness of the corruption problem in the country.	1. Are Strategy objectives set adequately so as to respond to the needs for fight against corruption at the given moment? 2. Have strategic objectives separately affected the change of those phenomena (for better or for worse)? 3. Have interventions during Strategy implementation (eg. Reviewing of the AP or risk assessment) assisted/hindered in achieving the objectives?	<ul style="list-style-type: none"> • Impact of political and economic system reforms on fight against corruption • Degree of implementation of recommendations from corruption risk assessment and other relevant reports • Degree of success of changes in the Action Plans • Improvement/declining in the corruption trends 	<ul style="list-style-type: none"> • Reports of competent institutions for implementation of political and economic reforms • Reports of relevant international organizations • Thematic reports of Directorate for Anti-Corruption Initiative 	<ul style="list-style-type: none"> • Data based on previous research • Targeted interviews with key Government services
	4. Are Strategy objectives harmonized with the objectives of other policies and partner organizations programmes (international and domestic –civil sector)?	<ul style="list-style-type: none"> • Coordination with activities and strategies of partner organizations • Joint development of strategic documents 	<ul style="list-style-type: none"> • Partner organizations reports 	<ul style="list-style-type: none"> • Talks and discussions between partner organizations and the Government
B. Desirable efficacy	Is it realistic to expect the set strategic objectives to produce the desired outcome?	<ul style="list-style-type: none"> • Fulfilment of set objectives based on the implemented measures from AP • Real feasibility of objectives in relation to objective parameters of progress in fight against corruption • Existence of data on trends and courses of corruption (number of initiated investigations, procedures and verdicts etc.) • Independent assessment of Strategy efficacy 	<ul style="list-style-type: none"> • NC report • Reports of other stakeholders (tripartite commission, international organizations) 	<ul style="list-style-type: none"> • Review of available reports • Targeted interviews with organizations working on monitoring the Strategy and AP implementation (NC, non-governmental sector) • Independent risk assessments and evaluation of independent experts
C. Efficiency of the	Was the evaluation	• Timely and adequate	• Governmental	Joint monitoring of the

evaluation process	<p>process</p> <p>(i) supported by the Government and other competent institutions in political and material sense?</p> <p>(ii) have evaluations become part of the system approach of Strategy development?</p>	<p>support of the Government to the evaluation process</p> <ul style="list-style-type: none"> • Impact of institutional support on the creation of positive outcomes of evaluation • Issues of evaluation framework implementation 	and non-governmental sector	evaluation process by the competent government and non-governmental organizations
D. Sustainability	Can it be expected that the planned outcomes of the strategic objectives become sustainable?	<ul style="list-style-type: none"> • Institutional capacity for adequate political support and financial support • Financial sustainability of the achievements in fight against corruption (if creation of new bodies and the like is concerned) • Ownership of the process of fight against corruption is divided between the Government and the non-governmental sector 	<ul style="list-style-type: none"> • EC Progress reports • Budget • Analytical reports of particular organizations monitoring progress in fight against corruption 	<ul style="list-style-type: none"> • Public debate on the strategic objectives and their sustainability • Joint recommendations stemming from the public debate

TABLE 2: TIME FRAMEWORK FOR EVALUATION

Year Strategic cycle segment	2011	2012	2013	2016	2017
A. Risk assessment	Corruption risk assessment in six areas of special risk		Risk assessment in other areas (police, judiciary, tourism, etc.)		Repeated investigations and risk assessment in all sensitive areas as the preliminary phase for development of strategic documents after 2018
B. Development of new strategic documents	Review of the Action Plan 2010-2012, including short-term recommendations from the risk assessment	Development of the new Action Plan 2012-2014 including mid-term recommendations from the risk assessment and recommendations for beginning negotiations with EU (screening)	Development of the new Strategy 2014-2018 and Action Plan 2014-2016 in compliance with the recommendations from both risk assessments (6 areas and new areas) and progress in negotiations with EU	Development of the new Action Plan 2016-2018	Development of the new strategic framework after 2018 in compliance with the repeated risk assessment and progress in negotiations with EU
C. Evaluation of the Strategy and Action Plan impact	Adoption of the evaluation framework for the Strategy		Evaluation of the Strategy impact 2010-2014 (including also evaluation of sector strategies)		Final evaluation of the impact of two last strategic cycles and development of a new Strategy or some other approach after 2018 (depending on the progress in opening/closing of negotiation chapters with EU)